



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DEC 11 2009

Robert J. Kabel, Chairman
District of Columbia Republican Committee
1275 K Street, N.W., Suite 102
Washington, D.C. 20005

RE: MUR 6110

Dear Mr. Kabel:

On November 17, 2009, the Federal Election Commission reviewed the allegations in your complaint dated October 21, 2008, and decided to take the following actions on the basis of the information provided in your complaint, and information provided by Obama for America, the Democratic National Committee and the Obama Victory Fund, Senate Realty Corporation, Square Root Sales, M&A Development, L.L.C., and David von Storch, President of VIDA Fitness:

- Dismiss the allegation that Square Root Sales violated 2 U.S.C. § 441b(a);
- Dismiss the allegation that Senate Realty Corporation violated 2 U.S.C. § 441b(a) and caution Senate Realty Corporation regarding the use of its corporate logo in connection with the Concert for Change;
- Dismiss the allegation that M&A Development, L.L.C. violated 2 U.S.C. § 441b(a) and caution M&A Development, L.L.C. regarding the use of its corporate logo in connection with the Concert for Change;
- Dismiss the allegation that the Obama Victory Fund and Andrew Tobias, in his official capacity as treasurer, violated the Act based on the alleged receipt of contributions from Square Root Sales, Senate Realty Corporation, and M&A Development, L.L.C.;
- Dismiss the allegation that the Democratic National Committee and Andrew Tobias, in his official capacity as treasurer, violated the Act based on the alleged receipt of contributions from Square Root Sales, Senate Realty Corporation, and M&A Development, L.L.C.;
- Dismiss the allegation that Obama For America and Martin Nesbitt, in his official capacity as treasurer, violated the Act based on the alleged receipt of contributions from Square Root Sales, Senate Realty Corporation, and M&A Development, L.L.C.;

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- Find no reason to believe that the Obama Victory Fund and Andrew Tobias, in his official capacity as treasurer, violated 11 C.F.R. § 102.17(c) in connection with the Concert for Change;
- Find no reason to believe that the Democratic National Committee and Andrew Tobias, in his official capacity as treasurer, violated 11 C.F.R. § 102.17(c) in connection with the Concert for Change;
- Find no reason to believe that Obama for America and Martin Nesbitt, in his official capacity as treasurer, violated 11 C.F.R. § 102.17(c) in connection with the Concert for Change;
- Find no reason to believe that the Obama Victory Fund and Andrew Tobias, in his official capacity as treasurer, violated 2 U.S.C. § 441b(a) in connection with the VIDA Fitness/Bang Salon event;
- Dismiss the allegation that VIDA Fitness violated 11 C.F.R. § 102.17(c);
- Dismiss the allegation that Urban Salons, Inc., d/b/a Bang Salon Spa violated 11 C.F.R. § 102.17; and
- Find no reason to believe that OVF violated 11 C.F.R. § 102.17(c) with respect to the solicitations for the VIDA Fitness/Bang Salon fundraiser.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analyses, which more fully explain(s) the Commission's finding(s) is/are enclosed.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* 2 U.S.C. § 437g(a)(8).

Sincerely,

Thomasenia P. Duncan
General Counsel



BY: Mark Allen
Assistant General Counsel

Enclosures:
Factual and Legal Analyses

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1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

4
5 **RESPONDENT:** Square Root Sales

MUR 6110

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8 **I. GENERATION OF MATTER**

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10 This matter was generated by a complaint filed with the Federal Election Commission by
11 Robert J. Kabel, on behalf of the District of Columbia Republican Committee. See 2 U.S.C.
12 § 437g(a)(1).

13 **II. INTRODUCTION**

14 The complaint alleges that Square Root Sales was one of three corporations (together,
15 "Businesses") that sponsored a fundraising event on September 28, 2008 called the "Concert for
16 Change" that was allegedly held by Obama for America ("OFA"), the principal campaign
17 committee of Barack Obama for his 2008 presidential campaign, the Democratic National
18 Committee ("DNC"), and the Obama Victory Fund ("OVF"), a joint fundraising committee that
19 disburses its proceeds to the DNC and OFA (together "Committees"). The Concert for Change
20 (the "Concert") was held at the Atlas Theater in Washington, D.C., and, according to one of the
21 Concert's web pages, it raised \$13,500 in contributions. The complaint alleged that the
22 Businesses that sponsored the Concert made prohibited corporate contributions in violation of 2
23 U.S.C. § 441b(a) or facilitated contributions in violation of 11 C.F.R. § 114.2(f)(1). See
24 Complaint at 3-4.

25 As discussed in greater detail below, it appears that the Businesses, which were identified
26 in some of the Concert's promotional materials as "sponsors" of the Concert, did not use their
27 general treasury funds to pay the costs of the Concert. Rather, individuals affiliated with the
28 Businesses used their personal funds to pay the costs of the Concert.

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1 Consequently, the Commission dismisses the allegation that that Square Root Sales
2 violated the Act by making prohibited corporate contributions in connection with the Concert.

3 **III. FACTUAL SUMMARY**

4 According to the complaint, unknown individuals promoted the “Concert for Change” by
5 distributing flyers and signs near the Eastern Market Metro in Washington, D.C., and by
6 establishing web pages that solicited contributions on the OFA and DNC websites. Some of the
7 Concert’s promotional materials, which were attached to the complaint, state that the Businesses
8 were “in-kind sponsors” of the Concert.

9 The Concert’s unknown organizer(s) rented the Lang Theater, a space within the Atlas
10 Theater at 1338 H Street, N.E., in Washington, D.C., that normally rents for \$6,000, and
11 arranged for singer Steve Washington and the “Doug Elliot Orchestra” to perform. According to
12 the Concert’s promotional materials, the event included a cash bar and valet parking. The theater
13 also normally requires event organizers to hire security guards and pay insurance. Sound
14 equipment is not included in the cost of the theater and may also have been an additional
15 expense. According to its website, www.aconcertforchange.org, the event’s organizers were able
16 to raise \$13,500, mostly through ticket sales at the theater. The available information does not
17 indicate whether or how the theater box office collected the required contributor information and
18 forwarded the contributions to OVF (or OFA or DNC).

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1 **A. Concert for Change Sign**

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3 The complaint alleged that the Concert's organizer(s) distributed flyers and posted signs
4 for the Concert in the Eastern Market area of Washington, D.C. Complaint at 3. A sign,
5 submitted as an attachment to the complaint, describes the Concert as a "concert-cabaret
6 fundraiser for The Obama Campaign" and provides a website address,
7 www.aconcertforchange.org. The sign also states, below the official logo and web address of the
8 Obama campaign (OFA), "FUNDRAISER." The image of the OFA logo is of poor quality,
9 however, as if it was a copy enlarged many times. Near the bottom of that panel, it states "Many
10 thanks to our individual in-kind contributors (sponsors) affiliated with the following
11 organizations" above the names of five people and the names and logos of the Businesses. The
12 first name is that of Chase Alan Moore along with the name and logo of "Square Root Sales"
13 with text which states "real estate marketing, sales, and management." The second set of names,
14 Lisa Williams, Cher Castillo Freeman, and James Williams, is printed above the name and logo
15 of Senate Realty Corporation. The final name and logo combination is that of Anthony
16 Washington and M&A Development.

17 **B. Obama For America Website**

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19 The Concert's sign includes a website address for the Concert,
20 www.aconcertforchange.org. That web address redirects visitors to a Concert webpage on the
21 My Barack Obama ("MyBO") section of the OFA website. The MyBO section of the OFA
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1 website encouraged and enabled Obama's supporters to create accounts, solicit votes and
2 contributions, and organize events.¹

3 At the top of the Concert's page on MyBO, there is a graphic that includes the portion of
4 the Concert's sign that depicts the singer, states that it is a fundraiser for the "Obama Campaign,"
5 and lists the names and corporate logos of M&A Development, Senate Realty, and Square Root
6 Sales under the Obama Campaign logo, Obama campaign website address, and the title
7 "Individual in-kind contributor affiliations." No individuals' names are listed with the corporate
8 names and logos in this graphic. The Concert's MyBO page also includes text that details the
9 Concert's date, location, the phone number of the theater's box office, and the cost of
10 tickets/donations. There is also a link for making contributions online that resembles a
11 thermometer indicating the degree to which the Concert's fundraising goal has been met. It
12 appears that the Concert for Change organizer(s) set a goal of \$15,000 or \$30,000 (the Concert's
13 web page inconsistently indicates both of these figures as the Concert's fundraising goal). The
14 text describing the Concert for Change states that contributions will go to OVF, that "your
15 donation is your ticket," and that the box office will have a record of "your" donation. The
16 minimum donation was \$35 although the suggested donation was \$100-500 and the maximum
17 donation was \$4,600. The page concludes with the statement "Many thanks to our generous

¹ The link from the main page of the Obama campaign website to its MyBO section states "ORGANIZE LOCALLY WITH OUR ONLINE TOOLS." An instructional video posted on the MyBO website teaches supporters how to use these tools. For example, by typing their address, supporters could obtain from OFA a list of their neighbors to contact, flyers to print and hand out, and the means to report back the results of their contacts with voters so that the campaign "can capture and use that information." Also, as the Concert's web page demonstrates, the MyBO site enabled supporters to create their own web page that solicited contributions, send email messages to their contacts, and organize their own events. The Obama supporters' organizing performance statistics (e.g., events attended, events organized, contributions raised) are recorded and displayed. For fundraising, the site enables the supporter to set a fundraising goal, email their contacts with a personal message soliciting contributions, and track the contributions they raise. The Concert's page on the MyBO site includes a title near the top of the page that states "Personal Fundraising." The MyBO site, including its fundraising section and instructional video, does not contain any warnings that contributions should not be raised using the funds or resources of sources prohibited by the Act, such as corporations, labor unions, and foreign nationals.

1 individual in-kind contributing sponsors” and the same list of names and companies as in the
2 sign described above.

3 Consistent with the sign described above, which indicated that the Concert was a
4 fundraiser to benefit OFA, the MyBO online contribution link on the Concert’s webpage
5 includes the text, “Obama ’08,” which suggests that contributions made through the website
6 were made to OFA. However, the Concert’s web page on MyBO also states that “100% of ALL
7 donations go directly to the Obama Victory Fund,” the OFA/DNC joint fundraiser. Thus, it is
8 unclear whether the recipient of the contributions made through this web page was OFA or OVF.
9 Moreover, if the recipient was OVF, there is no joint fundraising notice on the Concert’s MyBO
10 web page or the contribution page currently connected to the contribution link on the Concert’s
11 MyBO web page.² See 11 C.F.R. § 102.17(c).

12 C. Democratic National Committee Websites

13 The Concert’s organizers also posted a web page on the PartyBuilder section of the DNC
14 website, www.democrats.org/page/outreach/view/total/aconcertforchange, which solicited
15 donations.³ The text of the web page states a fundraising goal of \$30,000. Like the Concert’s
16 web page on MyBO, the Concert’s web page on the DNC web site also solicited online
17 contributions. The Concert’s DNC web page, like the Concert’s poster and web page on MyBO,

² Currently, a disclaimer on the MyBO site says that it is being maintained by “Organize for America,” a project of the Democratic National Committee. The donation link on the website leads to a page stating, in part: “Our success required unprecedented resources, and the Democratic National Committee played a major role on the ground efforts that generated record turnout up and down the ticket . . . Please make a donation to the DNC to help fund the efforts it undertook in 2008.” Organize for America is the group created within the DNC after the November 2008 election to continue the grassroots organizing begun by OFA and assume control OFA’s list of 13 million email addresses. See Chris Cillizia, *Obama Announces Organizing for America* (January 17, 2009) found at <http://voices.washingtonpost.com/thewhitehouse/obama-announces-organizing-for.html>; see also Jim Rutenberg and Adam Nagourney, *Melding Obama’s Web to a YouTube Presidency* (January 25, 2009) found at <http://www.nytimes.com/2009/01/26/us/politics/26grassroots.html>.

³ Like the MyBO section of the OFA website, PartyBuilder enables DNC supporters to create and manage a “personal fundraising homepage” for “keeping track of all personal fundraising.”

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1 stated that the Concert was a “fundraiser to support THE OBAMA CAMPAIGN” (emphasis in
2 original) and bore the Obama campaign name, logo, and website address. However, the
3 Concert’s DNC web page also stated that “100% of donations go directly to the Obama Victory
4 Fund.” The Concert’s DNC web page also stated that the “individual donors will be recognized
5 by the DNC.” Thus, it is unclear whether the recipient of contributions made through this web
6 page was the DNC or OVF. Moreover, if the recipient was OVF, neither the Concert’s DNC
7 web page nor the contribution page currently connected to the link on the Concert’s web page
8 include a joint fundraising notice. *See* 11 C.F.R. § 102.17(c).

9 Like the poster and OFA MyBO web page described above, the Concert’s DNC web
10 page includes the same set of individual names and corporate names and logos below the
11 statement: “Many thanks to our generous gift-in-kind sponsors.” The page also contains a
12 graphic similar to that on the OFA MyBO web page that, in addition to stating the name of the
13 musical entertainment at the Concert and the statement that it is a “fundraiser for The Obama
14 Campaign,” lists along its right side the names and corporate logos of M&A Development,
15 Senate Realty, and Square Root Sales under the Obama Campaign logo, Obama campaign
16 website address, and the title “In-Kind Sponsors.” No individuals’ names are listed with the
17 corporate logos in this graphic. At the bottom of the webpage, it states “Copyright 1995-2008
18 DNC Services Corp.,” “Paid for by the Democratic National Committee,” the DNC address, and
19 “This communication is not authorized by any candidate or candidate’s committee.”⁴

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⁴ A separate Concert web page on the DNC PartyBuilder website similar in content to the Concert’s OFA and DNC web pages described above is found at www.democrats.org/page/event/detail/4vkfp. It largely duplicates the content of the Concert’s OFA and DNC web pages described above. The link on the page for making a contribution, in order to obtain a ticket to the Concert, directs the viewer to the Concert’s DNC website described above. This page lists Chase Moore as the host of the Concert.

1 **D. Square Root Sales**

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3 The Concert's promotional materials list the Businesses and affiliated individuals as
4 "individual in-kind contribution sponsors," and one web page listed the Businesses as "In-Kind
5 Sponsors" without the names of any individuals. One of the Businesses identified in the
6 promotional materials is Square Root Sales.

7 A copy of the complaint was sent to the attention of Chase Alan Moore, who the
8 promotional materials indicated was affiliated with "Square Root Sales" and who is also the
9 registered agent for an entity called "Square Root, LLC." Square Root Sales Response at 1. In
10 his response, Moore clarified that Square Root Sales is the name of a team of real estate agents at
11 Senate Realty Corporation which was to be distinguished from Square Root, LLC, which had no
12 connection to the Concert for Change. According to the website of Square Root Sales, Moore is
13 the leader of the Square Root Sales team. The available information also indicates that one of
14 the members of the Square Root Sales team is Steve Washington, the performer at the Concert.

15 According to Moore, neither the Square Root Sales team nor Square Root, LLC, made a
16 contribution to the Concert. Square Root Sales Response at 1.⁵ However, Moore stated that,
17 using personal funds, he made an in-kind contribution within the limits of the Act to support the
18 Concert. *Id.* Although a Concert web page on the DNC Party Builder web site lists Moore as
19 the "host" of the Concert and provides his phone number, Moore claims that he was not an
20 organizer of the Concert, did not produce the materials or invitations that were attached to the
21 complaint, did not have an active role in distributing the invitations, and only participated,

⁵ Chase stated in the Square Root Sales response that Square Root, LLC, "was not involved in any way with the" Concert. Square Root Sales Response at 1. However, in the next sentence, he wrote, "Square Root, LLC did make a contribution directly or in kind to the event." *Id.* Considering the clarity of the first sentence and the peculiar syntax of the second sentence, the inconsistency between these sentences appeared to be the result of a typographical error in the second sentence. The Commission contacted Moore to clarify his response and he stated that the second sentence should have stated "Square Root, LLC did not make a contribution directly or in kind to the event."

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1 without any explanation as to how he participated, because the performer (Steve Washington)
2 was a "personal friend." *Id.* at 1-2.

3 **IV. ANALYSIS**

4 Corporations are prohibited from making any contributions to candidates for federal
5 office, including facilitating the making of a contribution by using its corporate resources to
6 engage in fundraising activities in connection with any federal election. *See* 2 U.S.C. § 441b(a);
7 11 C.F.R. § 114.2(f)(1). The available information indicates that Square Root Sales is an
8 unincorporated team of real estate agents working for Senate Realty Corporation. *See* Square
9 Root Sales Response at 1. Thus, it does not appear to be a separate legal entity with its own
10 resources.

11 It is not clear from the Concert's promotional materials whether the Concert's "sponsors"
12 were the named individuals acting in their personal capacity, or were the businesses associated
13 with those individuals. For instance, the Concert's sign states "Many thanks to our *individual in-*
14 *kind contributors (sponsors) affiliated with the following organizations"* (emphasis added), and it
15 lists the names of individuals above their affiliated corporate logos. The Concert's MyBO web
16 page also thanks the Concert's "generous individual in-kind contribution sponsors" and lists the
17 same individual names and business names. The Concert's MyBO webpage also includes a
18 graphic that identifies the Businesses as "Individual in-kind contributor affiliations" but does not
19 list the individuals associated with the Businesses within the graphic. The clearest indication
20 that the Businesses may have made or facilitated contributions is found in the Concert's DNC
21 webpage which includes a graphic that identifies the Businesses as the Concert's "In-Kind
22 Sponsors" without any mention of individual contributors/sponsors. At the bottom of the

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1 Concert's DNC webpage, it lists both individuals and the Businesses with which they are
2 affiliated as "gift-in-kind sponsors."

3 The available information indicates that no corporate or other business entity's funds
4 were used to pay for the costs of the Concert. Rather, individuals named in the promotional
5 materials used their personal funds and volunteered in their individual capacity.⁶ A related issue,
6 however, is whether the inclusion of business entity names and logos in the Concert's
7 promotional materials constituted a contribution by those businesses.

8 Although the use of the companies' names and logos in this matter may have constituted
9 a contribution from Square Root Sales to the Committees, for the reasons set forth below, the
10 Commission dismisses the allegation that Square Root Sales violated the Act through
11 contributions made to the Committees.

12 A contribution includes anything of value made by any person for the purpose of
13 influencing a Federal election. 2 U.S.C. § 431(8)(A)(i). The term "anything of value"
14 encompasses any goods or services provided without charge or at less the usual and normal
15 charge unless otherwise specifically exempted. See 11 C.F.R. § 100.52(d)(1). Corporate names,
16 trademarks, and service marks can be valuable corporate resources, and corporations may invest
17 substantial resources in choosing a trademark, developing its value, and defending it. A
18 trademark is a limited property right in a "particular word, phrase or symbol." See *New Kids on*
19 *the Block v. News America Pub., Inc.*, 971 F.2d 302, 306 (9th Cir. 1992). Trade names are also
20 protected when they acquire a "secondary meaning" in that they "symbolize a particular
21 business." *Madrigal Audio Labs., Inc. v. Cello, Ltd.*, 799 F.2d 814, 822 (2d Cir. 1986).

⁶ A search of the FEC disclosure database did not reveal any disclosures by the Committees indicating that they received contributions from the individuals named in the Concert's promotional materials.

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1 A corporation's name and trademark, therefore, are things of value owned by the
2 corporation. Because the Act prohibits corporations from contributing anything of value to
3 committees, or using their resources to facilitate contributions to committees, a donation by a
4 corporation of its trademark to a committee (for example, to use on a solicitation for
5 contributions to a committee or to indicate the corporation's support for a candidate) would
6 constitute an impermissible corporate contribution.

7 Accordingly, the Commission has previously considered corporate names and trademarks
8 to be things of value. In MUR 5578 (Wetterling for Congress), the complaint alleged that a
9 committee received a corporate contribution when it allegedly used a corporation's trademark
10 (America's Most Wanted) in a campaign ad. *See* MUR 5578 Complaint at 1-2 . The
11 Commission approved the recommendation of the General Counsel's Office to find no reason to
12 believe that Wetterling for Congress violated the Act for several reasons, including that the
13 committee paid for all advertising expenses, the advertisement did not include or suggest a
14 corporate endorsement, and the fact that the alleged corporate logo used in the campaign ad at
15 issue was not the alleged contributing corporation's logo. *See* MUR 5578 Certification of
16 Commission's Actions on February 22, 2006; First General Counsel's Report at 4-8.

17 In Advisory Opinion 2007-10 (Reyes), the Commission concluded that a committee
18 holding a fundraising golf tournament could not give recognition to its contributors by posting
19 signs at particular holes with the contributors' names and job titles as well as the name,
20 trademark, or service mark of their employers. *See* AO 2007-10 (Reyes) at 3. The AO requestor
21 stated that its inclusion of the names, trademarks, and service marks of its contributors' corporate
22 employers was intended to encourage contributions. *Id.* at 2. The Commission concluded that
23 corporate names, trademarks, and service marks "are corporate resources" and, because neither a

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1 corporation nor its agents may use the corporation's resources to facilitate the making of
2 contributions to a federal political committee, the proposed activity would violate the Act. *Id.* at
3 2-3. In AO 2007-10 (Reyes), the Commission distinguished AO 1984-43 (Brunswick) and AO
4 1978-77 (Aspin), in which the Commission concluded that a candidate's endorsers may be
5 identified with their corporate positions in campaign-funded advertisements, noting that neither
6 involved the use of corporate resources to facilitate contributions and that both predated the
7 Commission's corporate facilitation regulations. *Id.* at 3; *see also Corporate and Labor*
8 *Organization Activity; Express Advocacy and Coordination with Candidates Explanation and*
9 *Justification*, 60 Fed. Reg. 64260, 64274-75 (Dec. 14, 1995).⁷

10 In contrast to the circumstances in *Wetterling*, the Committees did not pay for the
11 expenses associated with the Concert's promotional materials, some of the Concert's
12 promotional materials suggest a corporate endorsement, and the names and logos used in the
13 Concert's promotional materials were those of the Businesses. Although the name and logo of
14 Square Root Sales in the Concert's solicitations were things of value, the value of the name and
15 logo of this particular business is likely insubstantial, and the fundraising event was relatively
16 modest in size. The Concert raised \$13,500 and was attended by less than 200 people. Under
17 these circumstances, further use of the Commission's resources for an investigation is not
18 warranted. *See Heckler v. Chaney*, 470 U.S. 821, 831 (1985). Accordingly, the Commission

⁷ The Commission has previously considered a specific regulation applicable to the use of corporate logos when promulgating regulations in response to the Supreme Court's decision in *Federal Election Commission v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238 (1986). The Commission considered alternative drafts and ultimately was unable to reach a majority decision. *See Corporate and Labor Organization Activity; Express Advocacy and Coordination with Candidates Explanation and Justification*, 60 Fed. Reg. 64260, 64268 (December 14, 1995). Nevertheless, as discussed above, and as observed by the Commission in MUR 5578 and AO 2007-10 after the 1995 rulemaking, the use of a corporate name or logo is something of value within the meaning of 2 U.S.C. § 441b(a).

1 dismisses the allegation that Square Root Sales contributed to the Committees in violation of
2 2 U.S.C. § 441b(a).

3 **V. CONCLUSION**

4 The Commission dismisses the allegation that Square Root Sales contributed to the
5 Committees in violation of 2 U.S.C. § 441b(a). *See Heckler v. Chaney*, 470 U.S. 821, 831
6 (1985).

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1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

4
5 **RESPONDENT:** Senate Realty Corporation

MUR 6110

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7 **I. GENERATION OF MATTER**

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10 Robert J. Kabel, on behalf of the District of Columbia Republican Committee. See 2 U.S.C.
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12 **II. INTRODUCTION**

13 The complaint alleges that Senate Realty Corporation was one of three corporations
14 (together, "Businesses") that sponsored a fundraising event in September 2008 called the
15 "Concert for Change" that was allegedly held by Obama for America ("OFA"), the principal
16 campaign committee of Barack Obama for his 2008 presidential campaign, the Democratic
17 National Committee ("DNC"), and the Obama Victory Fund ("OVF"), a joint fundraising
18 committee that disburses its proceeds to the DNC and OFA, (together "Committees"). The
19 Concert for Change (the "Concert") was held at the Atlas Theater in Washington, D.C., and,
20 according to one of the Concert's web pages, it raised \$13,500 in contributions. The complaint
21 alleged that the Businesses that sponsored the Concert made prohibited corporate contributions
22 in violation of 2 U.S.C. § 441b(a) or facilitated contributions in violation of 11 C.F.R.
23 § 114.2(f)(1). See Complaint at 3-4.

24 As discussed in greater detail below, it appears that the Businesses, which were identified
25 in some of the Concert's promotional materials as "sponsors" of the Concert, did not use their
26 general treasury funds to pay the costs of the Concert. Rather, individuals affiliated with the
27 Businesses used their personal funds to pay the costs of the Concert. The available information

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1 indicates that OVF, OFA, and the DNC were unaware of the Concert until the complaint was
2 filed and that the Concert was not an official or authorized event. The Concert's organizer(s)
3 were not identified in the complaint and there is no information suggesting that they formed an
4 enterprise with ongoing activities or assets.

5 Consequently, the Commission dismisses the allegation that that Senate Realty
6 Corporation violated the Act by making prohibited corporate contributions in connection with
7 the Concert.

8 **III. FACTUAL SUMMARY**

9 According to the complaint, unknown individuals promoted the "Concert for Change" by
10 distributing flyers and signs near the Eastern Market Metro in Washington, D.C., and by
11 establishing web pages that solicited contributions on the OFA and DNC websites. Some of the
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13 were "in-kind sponsors" of the Concert.

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15 Theater at 1338 H Street, N.E., in Washington, D.C., that normally rents for \$6,000, and
16 arranged for singer Steve Washington and the "Doug Elliot Orchestra" to perform. According to
17 the Concert's promotional materials, the event included a cash bar and valet parking. The theater
18 also normally requires event organizers to hire security guards and pay insurance. Sound
19 equipment is not included in the cost of the theater and may also have been an additional
20 expense. According to its website, www.aconcertforchange.org, the event's organizers were able
21 to raise \$13,500, mostly through ticket sales at the theater. The available information does not
22 indicate whether or how the theater box office collected the required contributor information and
23 forwarded the contributions to OVF (or OFA or DNC).

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1 **A. Concert for Change Sign**

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9 however, as if it was a copy enlarged many times. Near the bottom of that panel, it states "Many
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15 of Senate Realty Corporation. The final name and logo combination is that of Anthony
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19 The Concert's sign includes a website address for the Concert,
20 www.aconcertforchange.org. That web address redirects visitors to a Concert webpage on the
21 My Barack Obama ("MyBO") section of the OFA website. The MyBO section of the OFA
22 website encouraged and enabled Obama's supporters to create accounts, solicit votes and
23 contributions, and organize events.¹

¹ The link from the main page of the Obama campaign website to its MyBO section states "ORGANIZE LOCALLY WITH OUR ONLINE TOOLS." An instructional video posted on the MyBO website teaches supporters how to use these tools. For example, by typing their address, supporters could obtain from OFA a list of their neighbors to

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1 At the top of the Concert's page on MyBO, there is a graphic that includes the portion of
2 the Concert's sign that depicts the singer, states that it is a fundraiser for the "Obama Campaign,"
3 and lists the names and corporate logos of M&A Development, Senate Realty, and Square Root
4 Sales under the Obama Campaign logo, Obama campaign website address, and the title
5 "Individual in-kind contributor affiliations." No individuals' names are listed with the corporate
6 names and logos in this graphic. The Concert's MyBO page also includes text that details the
7 Concert's date, location, the phone number of the theater's box office, and the cost of
8 tickets/donations. There is also a link for making contributions online that resembles a
9 thermometer indicating the degree to which the Concert's fundraising goal has been met. It
10 appears that the Concert for Change organizer(s) set a goal of \$15,000 or \$30,000 (the Concert's
11 web page inconsistently indicates both of these figures as the Concert's fundraising goal). The
12 text describing the Concert for Change states that contributions will go to OVF, that "your
13 donation is your ticket," and that the box office will have a record of "your" donation. The
14 minimum donation was \$35 although the suggested donation was \$100-500 and the maximum
15 donation was \$4,600. The page concludes with the statement "Many thanks to our generous
16 individual in-kind contributing sponsors" and the same list of names and companies as in the
17 sign described above.

contact, flyers to print and hand out, and the means to report back the results of their contacts with voters so that the campaign "can capture and use that information." Also, as the Concert's web page demonstrates, the MyBO site enabled supporters to create their own web page that solicited contributions, send email messages to their contacts, and organize their own events. The Obama supporters' organizing performance statistics (e.g., events attended, events organized, contributions raised) are recorded and displayed. For fundraising, the site enables the supporter to set a fundraising goal, email their contacts with a personal message soliciting contributions, and track the contributions they raise. The Concert's page on the MyBO site includes a title near the top of the page that states "Personal Fundraising." The MyBO site, including its fundraising section and instructional video, does not contain any warnings that contributions should not be raised using the funds or resources of sources prohibited by the Act, such as corporations, labor unions, and foreign nationals.

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1 Consistent with the sign described above, which indicated that the Concert was a
2 fundraiser to benefit OFA, the MyBO online contribution link on the Concert's webpage
3 includes the text, "Obama '08," which suggests that contributions made through the website
4 were made to OFA. However, the Concert's web page on MyBO also states that "100% of ALL
5 donations go directly to the Obama Victory Fund," the OFA/DNC joint fundraiser. Thus, it is
6 unclear whether the recipient of the contributions made through this web page was OFA or OVF.
7 Moreover, if the recipient was OVF, there is no joint fundraising notice on the Concert's MyBO
8 web page or the contribution page currently connected to the contribution link on the Concert's
9 MyBO web page.² See 11 C.F.R. § 102.17(c).

10 C. Democratic National Committee Websites

11 The Concert's organizers also posted a web page on the PartyBuilder section of the DNC
12 website, www.democrats.org/page/outreach/view/total/aconcertforchange, which solicited
13 donations.³ The text of the web page states a fundraising goal of \$30,000. Like the Concert's
14 web page on MyBO, the Concert's web page on the DNC web site also solicited online
15 contributions. The Concert's DNC web page, like the Concert's poster and web page on MyBO,
16 stated that the Concert was a "fundraiser to support THE OBAMA CAMPAIGN" (emphasis in
17 original) and bore the Obama campaign name, logo, and website address. However, the

² Currently, a disclaimer on the MyBO site says that it is being maintained by "Organize for America," a project of the Democratic National Committee. The donation link on the website leads to a page stating, in part: "Our success required unprecedented resources, and the Democratic National Committee played a major role on the ground efforts that generated record turnout up and down the ticket . . . Please make a donation to the DNC to help fund the efforts it undertook in 2008." Organize for America is the group created within the DNC after the November 2008 election to continue the grassroots organizing begun by OFA and assume control OFA's list of 13 million email addresses. See Chris Cillizia, *Obama Announces Organizing for America* (January 17, 2009) found at <http://voices.washingtonpost.com/thefix/white-house/obama-announces-organizing-for.html>; see also Jim Rutenberg and Adam Nagourney, *Melding Obama's Web to a YouTube Presidency* (January 25, 2009) found at <http://www.nytimes.com/2009/01/26/us/politics/26grassroots.html>.

³ Like the MyBO section of the OFA website, PartyBuilder enables DNC supporters to create and manage a "personal fundraising homepage" for "keeping track of all personal fundraising."

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1 Concert's DNC web page also stated that "100% of donations go directly to the Obama Victory
2 Fund." The Concert's DNC web page also stated that the "individual donors will be recognized
3 by the DNC." Thus, it is unclear whether the recipient of contributions made through this web
4 page was the DNC or OVF. Moreover, if the recipient was OVF, neither the Concert's DNC
5 web page nor the contribution page currently connected to the link on the Concert's web page
6 include a joint fundraising notice. See 11 C.F.R. § 102.17(c).

7 Like the poster and OFA MyBO web page described above, the Concert's DNC web
8 page includes the same set of individual names and corporate names and logos below the
9 statement: "Many thanks to our generous gift-in-kind sponsors." The page also contains a
10 graphic similar to that on the OFA MyBO web page that, in addition to stating the name of the
11 musical entertainment at the Concert and the statement that it is a "fundraiser for The Obama
12 Campaign," lists along its right side the names and corporate logos of M&A Development,
13 Senate Realty, and Square Root Sales under the Obama Campaign logo, Obama campaign
14 website address, and the title "In-Kind Sponsors." No individuals' names are listed with the
15 corporate logos in this graphic. At the bottom of the webpage, it states "Copyright 1995-2008
16 DNC Services Corp.," "Paid for by the Democratic National Committee," the DNC address, and
17 "This communication is not authorized by any candidate or candidate's committee."⁴

18 **D. Senate Realty Corporation**

19 The Concert's promotional materials list the Businesses and affiliated individuals as
20 "individual in-kind contribution sponsors," and one web page listed the Businesses as "In-Kind
21

⁴ A separate Concert web page on the DNC PartyBuilder website similar in content to the Concert's OFA and DNC web pages described above is found at www.democrats.org/page/event/detail/4vkfp. It largely duplicates the content of the Concert's OFA and DNC web pages described above. The link on the page for making a contribution, in order to obtain a ticket to the Concert, directs the viewer to the Concert's DNC website described above. This page lists Chase Moore as the host of the Concert.

1 Sponsors” without the names of any individuals. One of the Businesses identified in the
2 promotional materials is Senate Realty, affiliated with Lisa Williams, Cher Castillo Freeman,
3 and James Williams.

4 Senate Realty Corporation is incorporated in Washington, D.C. Lisa Williams is Senate
5 Realty Corporation’s principal broker and a co-owner; her co-owners are James C. Williams and
6 Cher Castillo, the other two individuals whose names appear on the Concert for Change
7 promotional materials with the Senate Realty Corporation name and logo.

8 Ms. Williams states that “her work” on the Concert for Change was performed as a
9 volunteer acting in her personal capacity and not as a representative of Senate Realty. Senate
10 Realty Corporation Response at 1. Further, she stated that the use of the Senate Realty logo was
11 not meant to imply a corporate sponsorship of the event. *Id.* She also wrote that “I made an in-
12 kind contribution, paid by a check drawn from my personal checking account, to pay for
13 expenses related to the event.” *Id.* According to the Senate Realty response, “No Senate Realty
14 funds were used in connection with this in-kind contribution.” *Id.*

15 **IV. ANALYSIS**

16 Corporations, such as Senate Realty Corporation, are prohibited from making any
17 contributions to candidates for federal office, including facilitating the making of a contribution
18 by using its corporate resources to engage in fundraising activities in connection with any federal
19 election. *See* 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(f)(1).
20

21 It is not clear from the Concert’s promotional materials whether the Concert’s “sponsors”
22 were the named individuals acting in their personal capacity, or were the businesses associated
23 with those individuals. For instance, the Concert’s sign states “Many thanks to our *individual in-*
24 kind contributors (sponsors) affiliated with the following organizations” (emphasis added), and it

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1 lists the names of individuals above their affiliated corporate logos. The Concert's MyBO web
2 page also thanks the Concert's "generous individual in-kind contribution sponsors" and lists the
3 same individual names and business names. The Concert's MyBO webpage also includes a
4 graphic that identifies the Businesses as "Individual in-kind contributor affiliations" but does not
5 list the individuals associated with the Businesses within the graphic. The clearest indication
6 that the Businesses may have made or facilitated contributions is found in the Concert's DNC
7 webpage which includes a graphic that identifies the Businesses as the Concert's "In-Kind
8 Sponsors" without any mention of individual contributors/sponsors. At the bottom of the
9 Concert's DNC webpage, it lists both individuals and the Businesses with which they are
10 affiliated as "gift-in-kind sponsors."

11 The available information indicates that no corporate or other business entity's funds
12 were used to pay for the costs of the Concert. Rather, individuals named in the promotional
13 materials used their personal funds and volunteered in their individual capacity.⁵ A related issue,
14 however, is whether the inclusion of business entity names and logos in the Concert's
15 promotional materials constituted a contribution by those businesses.

16 Although the use of the Senate Realty Corporation name and logo in this matter may
17 have constituted a contribution from Senate Realty Corporation to the Committees, for the
18 reasons set forth below, the Commission dismisses the allegation that Senate Realty Corporation
19 violated the Act through a contribution made to the Committees.

⁵ A search of the FEC disclosure database did not reveal any disclosures by the Committees indicating that they received contributions from the individuals named in the Concert's promotional materials. The response of Senate Realty Corporation indicated that it attached to its response an "in-kind contribution form" demonstrating that Lisa Williams disclosed her personal in-kind contribution to OFA. On April 22, 2009, Ms. Williams submitted an undated form which bears the OFA logo and the disclaimer that it was "Paid for by Obama For America." The form appears to have been designed to allow OFA supporters to notify OFA about in-kind contributions. The form submitted by Ms. Williams states that she made a \$900.87 in-kind contribution comprising a September 29, 2008, payment to reserve the Atlas Theater for the Concert.

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1 A contribution includes anything of value made by any person for the purpose of
2 influencing a Federal election. 2 U.S.C. § 431(8)(A)(i). The term “anything of value”
3 encompasses any goods or services provided without charge or at less the usual and normal
4 charge unless otherwise specifically exempted. *See* 11 C.F.R. § 100.52(d)(1). Corporate names,
5 trademarks, and service marks can be valuable corporate resources, and corporations may invest
6 substantial resources in choosing a trademark, developing its value, and defending it. A
7 trademark is a limited property right in a “particular word, phrase or symbol.” *See New Kids on*
8 *the Block v. News America Pub., Inc.*, 971 F.2d 302, 306 (9th Cir. 1992). Trade names are also
9 protected when they acquire a “secondary meaning” in that they “symbolize a particular
10 business.” *Madrigal Audio Labs., Inc. v. Cello, Ltd.*, 799 F.2d 814, 822 (2d Cir. 1986).

11 A corporation’s name and trademark, therefore, are things of value owned by the
12 corporation. Because the Act prohibits corporations from contributing anything of value to
13 committees, or using their resources to facilitate contributions to committees, a donation by a
14 corporation of its trademark to a committee (for example, to use on a solicitation for
15 contributions to a committee or to indicate the corporation’s support for a candidate) would
16 constitute an impermissible corporate contribution.

17 Accordingly, the Commission has previously considered corporate names and trademarks
18 to be things of value. In MUR 5578 (Wetterling for Congress), the complaint alleged that a
19 committee received a corporate contribution when it allegedly used a corporation’s trademark
20 (America’s Most Wanted) in a campaign ad. *See* MUR 5578 Complaint at 1-2 . The
21 Commission approved the recommendation of the General Counsel’s Office to find no reason to
22 believe that Wetterling for Congress violated the Act for several reasons, including that the
23 committee paid for all advertising expenses, the advertisement did not include or suggest a

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1 corporate endorsement, and the fact that the alleged corporate logo used in the campaign ad at
2 issue was not the alleged contributing corporation's logo. *See* MUR 5578 Certification of
3 Commission's Actions on February 22, 2006; First General Counsel's Report at 4-8.

4 In Advisory Opinion 2007-10 (Reyes), the Commission concluded that a committee
5 holding a fundraising golf tournament could not give recognition to its contributors by posting
6 signs at particular holes with the contributors' names and job titles as well as the name,
7 trademark, or service mark of their employers. *See* AO 2007-10 (Reyes) at 3. The AO requestor
8 stated that its inclusion of the names, trademarks, and service marks of its contributors' corporate
9 employers was intended to encourage contributions. *Id.* at 2. The Commission concluded that
10 corporate names, trademarks, and service marks "are corporate resources" and, because neither a
11 corporation nor its agents may use the corporation's resources to facilitate the making of
12 contributions to a federal political committee, the proposed activity would violate the Act. *Id.* at
13 2-3. In AO 2007-10 (Reyes), the Commission distinguished AO 1984-43 (Brunswick) and AO
14 1978-77 (Aspin), in which the Commission concluded that a candidate's endorsers may be
15 identified with their corporate positions in campaign-funded advertisements, noting that neither
16 involved the use of corporate resources to facilitate contributions and that both predated the
17 Commission's corporate facilitation regulations. *Id.* at 3; *see also Corporate and Labor*
18 *Organization Activity; Express Advocacy and Coordination with Candidates Explanation and*
19 *Justification*, 60 Fed. Reg. 64260, 64274-75 (Dec. 14, 1995).⁶

⁶ The Commission has previously considered a specific regulation applicable to the use of corporate logos when promulgating regulations in response to the Supreme Court's decision in *Federal Election Commission v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238 (1986). The Commission considered alternative drafts and ultimately was unable to reach a majority decision. *See Corporate and Labor Organization Activity; Express Advocacy and Coordination with Candidates Explanation and Justification*, 60 Fed. Reg. 64260, 64268 (December 14, 1995). Nevertheless, as discussed above, and as observed by the Commission in MUR 5578 and AO 2007-10 after the 1995 rulemaking, the use of a corporate name or logo is something of value within the meaning of 2 U.S.C. § 441b(a).

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1 In contrast to the circumstances in *Wetterling*, the Committees did not pay for the
2 expenses associated with the Concert's promotional materials, some of the Concert's
3 promotional materials suggest a corporate endorsement, and the names and logos used in the
4 Concert's promotional materials were those of the Businesses. Although the corporate name and
5 logo of Senate Realty Corporation in the Concert's solicitations were things of value, the value
6 of the Senate Realty Corporation name and logo is likely insubstantial, and the fundraising event
7 was relatively modest in size. The Concert raised \$13,500 and was attended by less than 200
8 people. Under these circumstances, further use of the Commission's resources for an
9 investigation is not warranted. *See Heckler v. Chaney*, 470 U.S. 821, 831 (1985). Accordingly,
10 the Commission dismisses the allegation that Senate Realty Corporation contributed to the
11 Committees in violation of 2 U.S.C. § 441b(a) and cautions Senate Realty Corporation for its
12 apparent violation of 2 U.S.C. § 441b(a).

13 **V. CONCLUSION**

14 The Commission dismisses the allegation that Senate Realty Corporation contributed to
15 the Committees in violation of 2 U.S.C. § 441b(a), *see Heckler v. Chaney*, 470 U.S. 821, 831
16 (1985), and cautions Senate Realty Corporation for its apparent violation of 2 U.S.C. § 441b(a).

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1 **FEDERAL ELECTION COMMISSION**

2
3 **FACTUAL AND LEGAL ANALYSIS**

4
5 **RESPONDENT:** M & A Development, LLC

MUR 6110

6
7 **I. GENERATION OF MATTER**

8
9 This matter was generated by a complaint filed with the Federal Election Commission by
10 Robert J. Kabel, on behalf of the District of Columbia Republican Committee. *See* 2 U.S.C.
11 § 437g(a)(1).

12 **II. INTRODUCTION**

13 The complaint alleges that M&A Development, LLC, was one of three corporations
14 (together, "Businesses") that sponsored a fundraising event in September 2008 called the
15 "Concert for Change" that was allegedly held by Obama for America ("OFA"), the principal
16 campaign committee of Barack Obama for his 2008 presidential campaign, the Democratic
17 National Committee ("DNC"), and the Obama Victory Fund ("OVF"), a joint fundraising
18 committee that disburses its proceeds to the DNC and OFA, (together "Committees"). The
19 Concert for Change (the "Concert") was held at the Atlas Theater in Washington, D.C., and,
20 according to one of the Concert's web pages, it raised \$13,500 in contributions. The complaint
21 alleged that Businesses that sponsored the Concert made prohibited corporate contributions in
22 violation of 2 U.S.C. § 441b(a) or facilitated contributions in violation of 11 C.F.R. §
23 114.2(f)(1). *See* Complaint at 3-4.

24 As discussed in greater detail below, it appears that the Businesses, which were identified
25 in some of the Concert's promotional materials as "sponsors" of the Concert, did not use their
26 general treasury funds to pay the costs of the Concert. Rather, individuals affiliated with the
27 Businesses used their personal funds to pay the costs of the Concert. The available information

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1 indicates that OVF, OFA, and the DNC were unaware of the Concert until the complaint was
2 filed and that the Concert was not an official or authorized event. The Concert's organizer(s)
3 were not identified in the complaint and there is no information suggesting that they formed an
4 enterprise with ongoing activities or assets.

5 Consequently, the Commission dismisses the allegation that that M&A Development,
6 LLC, violated the Act by making prohibited corporate contributions in connection with the
7 Concert.

8 **III. FACTUAL SUMMARY**

9 According to the complaint, unknown individuals promoted the "Concert for Change" by
10 distributing flyers and signs near the Eastern Market Metro in Washington, D.C., and by
11 establishing web pages that solicited contributions on the OFA and DNC websites. Some of the
12 Concert's promotional materials, which were attached to the complaint, state that the Businesses
13 were "in-kind sponsors" of the Concert.

14 The Concert's unknown organizer(s) rented the Lang Theater, a space within the Atlas
15 Theater at 1338 H Street, N.E., in Washington, D.C., that normally rents for \$6,000, and
16 arranged for singer Steve Washington and the "Doug Elliot Orchestra" to perform. According to
17 the Concert's promotional materials, the event included a cash bar and valet parking. The theater
18 also normally requires event organizers to hire security guards and pay insurance. Sound
19 equipment is not included in the cost of the theater and may also have been an additional
20 expense. According to its website, www.aconcertforchange.org, the event's organizers were able
21 to raise \$13,500, mostly through ticket sales at the theater. The available information does not
22 indicate whether or how the theater box office collected the required contributor information and
23 forwarded the contributions to OVF (or OFA or DNC).

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1 **A. Concert for Change Sign**

2
3 The complaint alleged that the Concert’s organizer(s) distributed flyers and posted signs
4 for the Concert in the Eastern Market area of Washington, D.C. Complaint at 3. A sign,
5 submitted as an attachment to the complaint, describes the Concert as a “concert-cabaret
6 fundraiser for The Obama Campaign” and provides a website address,
7 www.aconcertforchange.org. The sign also states, below the official logo and web address of the
8 Obama campaign (OFA), “FUNDRAISER.” The image of the OFA logo is of poor quality,
9 however, as if it was a copy enlarged many times. Near the bottom of that panel, it states “Many
10 thanks to our individual in-kind contributors (sponsors) affiliated with the following
11 organizations” above the names of five people and the names and logos of the Businesses. The
12 first name is that of Chase Alan Moore along with the name and logo of “Square Root Sales”
13 with text which states “real estate marketing, sales, and management.” The second set of names,
14 Lisa Williams, Cher Castillo Freeman, and James Williams, is printed above the name and logo
15 of Senate Realty Corporation. The final name and logo combination is that of Anthony
16 Washington and M&A Development.

17 **B. Obama For America Website**

18
19 The Concert’s sign includes a website address for the Concert,
20 www.aconcertforchange.org. That web address redirects visitors to a Concert webpage on the
21 My Barack Obama (“MyBO”) section of the OFA website. The MyBO section of the OFA
22 website encouraged and enabled Obama’s supporters to create accounts, solicit votes and
23 contributions, and organize events.¹

¹ The link from the main page of the Obama campaign website to its MyBO section states “ORGANIZE LOCALLY WITH OUR ONLINE TOOLS.” An instructional video posted on the MyBO website teaches supporters how to use these tools. For example, by typing their address, supporters could obtain from OFA a list of their neighbors to

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1 At the top of the Concert's page on MyBO, there is a graphic that includes the portion of
2 the Concert's sign that depicts the singer, states that it is a fundraiser for the "Obama Campaign,"
3 and lists the names and corporate logos of M&A Development, Senate Realty, and Square Root
4 Sales under the Obama Campaign logo, Obama campaign website address, and the title
5 "Individual in-kind contributor affiliations." No individuals' names are listed with the corporate
6 names and logos in this graphic. The Concert's MyBO page also includes text that details the
7 Concert's date, location, the phone number of the theater's box office, and the cost of
8 tickets/donations. There is also a link for making contributions online that resembles a
9 thermometer indicating the degree to which the Concert's fundraising goal has been met. It
10 appears that the Concert for Change organizer(s) set a goal of \$15,000 or \$30,000 (the Concert's
11 web page inconsistently indicates both of these figures as the Concert's fundraising goal). The
12 text describing the Concert for Change states that contributions will go to OVF, that "your
13 donation is your ticket," and that the box office will have a record of "your" donation. The
14 minimum donation was \$35 although the suggested donation was \$100-500 and the maximum
15 donation was \$4,600. The page concludes with the statement "Many thanks to our generous
16 individual in-kind contributing sponsors" and the same list of names and companies as in the
17 sign described above.

contact, flyers to print and hand out, and the means to report back the results of their contacts with voters so that the campaign "can capture and use that information." Also, as the Concert's web page demonstrates, the MyBO site enabled supporters to create their own web page that solicited contributions, send email messages to their contacts, and organize their own events. The Obama supporters' organizing performance statistics (e.g., events attended, events organized, contributions raised) are recorded and displayed. For fundraising, the site enables the supporter to set a fundraising goal, email their contacts with a personal message soliciting contributions, and track the contributions they raise. The Concert's page on the MyBO site includes a title near the top of the page that states "Personal Fundraising." The MyBO site, including its fundraising section and instructional video, does not contain any warnings that contributions should not be raised using the funds or resources of sources prohibited by the Act, such as corporations, labor unions, and foreign nationals.

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1 Consistent with the sign described above, which indicated that the Concert was a
2 fundraiser to benefit OFA, the MyBO online contribution link on the Concert's webpage
3 includes the text, "Obama '08," which suggests that contributions made through the website
4 were made to OFA. However, the Concert's web page on MyBO also states that "100% of ALL
5 donations go directly to the Obama Victory Fund," the OFA/DNC joint fundraiser. Thus, it is
6 unclear whether the recipient of the contributions made through this web page was OFA or OVF.
7 Moreover, if the recipient was OVF, there is no joint fundraising notice on the Concert's MyBO
8 web page or the contribution page currently connected to the contribution link on the Concert's
9 MyBO web page.² See 11 C.F.R. § 102.17(c).

10 C. Democratic National Committee Websites

11 The Concert's organizers also posted a web page on the PartyBuilder section of the DNC
12 website, www.democrats.org/page/outreach/view/total/aconcertforchange, which solicited
13 donations.³ The text of the web page states a fundraising goal of \$30,000. Like the Concert's
14 web page on MyBO, the Concert's web page on the DNC web site also solicited online
15 contributions. The Concert's DNC web page, like the Concert's poster and web page on MyBO,
16 stated that the Concert was a "fundraiser to support THE OBAMA CAMPAIGN" (emphasis in
17 original) and bore the Obama campaign name, logo, and website address. However, the

² Currently, a disclaimer on the MyBO site says that it is being maintained by "Organize for America," a project of the Democratic National Committee. The donation link on the website leads to a page stating, in part: "Our success required unprecedented resources, and the Democratic National Committee played a major role on the ground efforts that generated record turnout up and down the ticket . . . Please make a donation to the DNC to help fund the efforts it undertook in 2008." Organize for America is the group created within the DNC after the November 2008 election to continue the grassroots organizing begun by OFA and assume control OFA's list of 13 million email addresses. See Chris Cillizia, *Obama Announces Organizing for America* (January 17, 2009) found at <http://voices.washingtonpost.com/thefix/white-house/obama-announces-organizing-for.html>; see also Jim Rutenberg and Adam Nagourney, *Melding Obama's Web to a YouTube Presidency* (January 25, 2009) found at <http://www.nytimes.com/2009/01/26/us/politics/26grassroots.html>.

³ Like the MyBO section of the OFA website, PartyBuilder enables DNC supporters to create and manage a "personal fundraising homepage" for "keeping track of all personal fundraising."

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1 Concert's DNC web page also stated that "100% of donations go directly to the Obama Victory
2 Fund." The Concert's DNC web page also stated that the "individual donors will be recognized
3 by the DNC." Thus, it is unclear whether the recipient of contributions made through this web
4 page was the DNC or OVF. Moreover, if the recipient was OVF, neither the Concert's DNC
5 web page nor the contribution page currently connected to the link on the Concert's web page
6 include a joint fundraising notice. *See* 11 C.F.R. § 102.17(c).

7 Like the poster and OFA MyBO web page described above, the Concert's DNC web
8 page includes the same set of individual names and corporate names and logos below the
9 statement: "Many thanks to our generous gift-in-kind sponsors." The page also contains a
10 graphic similar to that on the OFA MyBO web page that, in addition to stating the name of the
11 musical entertainment at the Concert and the statement that it is a "fundraiser for The Obama
12 Campaign," lists along its right side the names and corporate logos of M&A Development,
13 Senate Realty, and Square Root Sales under the Obama Campaign logo, Obama campaign
14 website address, and the title "In-Kind Sponsors." No individuals' names are listed with the
15 corporate logos in this graphic. At the bottom of the webpage, it states "Copyright 1995-2008
16 DNC Services Corp.," "Paid for by the Democratic National Committee," the DNC address, and
17 "This communication is not authorized by any candidate or candidate's committee."⁴

18

⁴ A separate Concert web page on the DNC PartyBuilder website similar in content to the Concert's OFA and DNC web pages described above is found at www.democrats.org/page/event/detail/4vkfp. It largely duplicates the content of the Concert's OFA and DNC web pages described above. The link on the page for making a contribution, in order to obtain a ticket to the Concert, directs the viewer to the Concert's DNC website described above. This page lists Chase Moore as the host of the Concert.

1 **D. M&A Development, LLC**

2
3 The Concert's promotional materials list the Businesses and affiliated individuals as
4 "individual in-kind contribution sponsors," and one web page listed the Businesses as "In-Kind
5 Sponsors" without the names of any individuals. One of the Businesses identified in the
6 promotional materials is M&A Development, affiliated with Anthony Washington.

7 A copy of the complaint was sent to M&A Development, LLC, to the attention of
8 Anthony Washington. During a telephone conversation with Washington, he asserted that M&A
9 Development, LLC, made no contribution, either by using its corporate treasury funds or through
10 an in-kind contribution. He noted that M&A has no employees, revenues, or expenses. He also
11 noted that the singer at the concert, Steve Washington, is his brother. Washington submitted a
12 written response to the complaint confirming that M&A Development, LLC, made no
13 contributions to the Concert but that he, personally, contributed \$1,000 to the event. *See* M&A
14 Response at 1.

15 **IV. ANALYSIS**

16 Corporations are prohibited from making any contributions to candidates for federal
17 office, including facilitating the making of a contribution by using its corporate resources to
18 engage in fundraising activities in connection with any federal election. *See* 2 U.S.C. § 441b(a);
19 11 C.F.R. § 114.2(f)(1). A limited liability company ("LLC") such as M&A Development, LLC,
20 is considered a corporation or a partnership under the Act depending on whether it elects to be
21 treated by the Internal Revenue Service as a corporation or a partnership. *See* 11 C.F.R. §
22 110.1(g). If an LLC is considered to be a partnership, it may make contributions to a candidate
23 for federal office subject to the limit in 2 U.S.C. § 441a(a)(1)(A), which was \$2,300 during the

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1 2008 election cycle. *See* 11 C.F.R. § 110.1(e). A contribution by a partnership is attributed to
2 the partnership and to each partner. *Id.*

3 It is not clear from the Concert's promotional materials whether the Concert's "sponsors"
4 were the named individuals acting in their personal capacity, or were the businesses associated
5 with those individuals. For instance, the Concert's sign states "Many thanks to our *individual in-*
6 *kind contributors (sponsors) affiliated with the following organizations"* (emphasis added), and it
7 lists the names of individuals above their affiliated corporate logos. The Concert's MyBO web
8 page also thanks the Concert's "generous individual in-kind contribution sponsors" and lists the
9 same individual names and business names. The Concert's MyBO webpage also includes a
10 graphic that identifies the Businesses as "Individual in-kind contributor affiliations" but does not
11 list the individuals associated with the Businesses within the graphic. The clearest indication
12 that the Businesses may have made or facilitated contributions is found in the Concert's DNC
13 webpage which includes a graphic that identifies the Businesses as the Concert's "In-Kind
14 Sponsors" without any mention of individual contributors/sponsors. At the bottom of the
15 Concert's DNC webpage, it lists both individuals and the Businesses with which they are
16 affiliated as "gift-in-kind sponsors."

17 The available information indicates that no corporate or other business entity's funds
18 were used to pay for the costs of the Concert. Rather, individuals named in the promotional
19 materials used their personal funds and volunteered in their individual capacity.⁵ A related issue,
20 however, is whether the inclusion of business entity names and logos in the Concert's
21 promotional materials constituted a contribution by those businesses.

⁵ A search of the FEC disclosure database did not reveal any disclosures by the Committees indicating that they received contributions from the individuals named in the Concert's promotional materials.

1 Although the use of the companies' names and logos in this matter may have constituted
2 a contribution from Square Root Sales to the Committees, for the reasons set forth below, the
3 Commission dismisses the allegation that Square Root Sales violated the Act through
4 contributions made to the Committees.

5 A contribution includes anything of value made by any person for the purpose of
6 influencing a Federal election. 2 U.S.C. § 431(8)(A)(i). The term "anything of value"
7 encompasses any goods or services provided without charge or at less the usual and normal
8 charge unless otherwise specifically exempted. See 11 C.F.R. § 100.52(d)(1). Corporate names,
9 trademarks, and service marks can be valuable corporate resources, and corporations may invest
10 substantial resources in choosing a trademark, developing its value, and defending it. A
11 trademark is a limited property right in a "particular word, phrase or symbol." See *New Kids on*
12 *the Block v. News America Pub., Inc.*, 971 F.2d 302, 306 (9th Cir. 1992). Trade names are also
13 protected when they acquire a "secondary meaning" in that they "symbolize a particular
14 business." *Madrigal Audio Labs., Inc. v. Cello, Ltd.*, 799 F.2d 814, 822 (2d Cir. 1986).

15 A corporation's name and trademark, therefore, are things of value owned by the
16 corporation. Because the Act prohibits corporations from contributing anything of value to
17 committees, or using their resources to facilitate contributions to committees, a donation by a
18 corporation of its trademark to a committee (for example, to use on a solicitation for
19 contributions to a committee or to indicate the corporation's support for a candidate) would
20 constitute an impermissible corporate contribution.

21 Accordingly, the Commission has previously considered corporate names and trademarks
22 to be things of value. In MUR 5578 (Wetterling for Congress), the complaint alleged that a
23 committee received a corporate contribution when it allegedly used a corporation's trademark

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1 (America's Most Wanted) in a campaign ad. *See* MUR 5578 Complaint at 1-2 . The
2 Commission approved the recommendation of the General Counsel's Office to find no reason to
3 believe that Wetterling for Congress violated the Act for several reasons, including that the
4 committee paid for all advertising expenses, the advertisement did not include or suggest a
5 corporate endorsement, and the fact that the alleged corporate logo used in the campaign ad at
6 issue was not the alleged contributing corporation's logo. *See* MUR 5578 Certification of
7 Commission's Actions on February 22, 2006; First General Counsel's Report at 4-8.

8 In Advisory Opinion 2007-10 (Reyes), the Commission concluded that a committee
9 holding a fundraising golf tournament could not give recognition to its contributors by posting
10 signs at particular holes with the contributors' names and job titles as well as the name,
11 trademark, or service mark of their employers. *See* AO 2007-10 (Reyes) at 3. The AO requestor
12 stated that its inclusion of the names, trademarks, and service marks of its contributors' corporate
13 employers was intended to encourage contributions. *Id.* at 2. The Commission concluded that
14 corporate names, trademarks, and service marks "are corporate resources" and, because neither a
15 corporation nor its agents may use the corporation's resources to facilitate the making of
16 contributions to a federal political committee, the proposed activity would violate the Act. *Id.* at
17 2-3. In AO 2007-10 (Reyes), the Commission distinguished AO 1984-43 (Brunswick) and AO
18 1978-77 (Aspin), in which the Commission concluded that a candidate's endorsers may be
19 identified with their corporate positions in campaign-funded advertisements, noting that neither
20 involved the use of corporate resources to facilitate contributions and that both predated the
21 Commission's corporate facilitation regulations. *Id.* at 3; *see also Corporate and Labor*

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1 *Organization Activity; Express Advocacy and Coordination with Candidates Explanation and*
2 *Justification*, 60 Fed. Reg. 64260, 64274-75 (Dec. 14, 1995).⁶

3 In contrast to the circumstances in *Wetterling*, the Committees did not pay for the
4 expenses associated with the Concert's promotional materials, some of the Concert's
5 promotional materials suggest a corporate endorsement, and the names and logos used in the
6 Concert's promotional materials were those of the Businesses. Although the name and logo of
7 M&A Development, LLC, in the Concert's solicitations were things of value, the value of the
8 names and logos of this particular business is likely insubstantial, and the fundraising event was
9 relatively modest in size. The Concert raised \$13,500 and was attended by less than 200 people.
10 Under these circumstances, further use of the Commission's resources for an investigation is not
11 warranted. *See Heckler v. Chaney*, 470 U.S. 821, 831 (1985). Accordingly, the Commission
12 dismisses the allegation that M&A Development, LLC, contributed to the Committees in
13 violation of 2 U.S.C. § 441b(a) and cautions M&A Development, LLC, for its apparent violation
14 of 2 U.S.C. § 441b(a).

15 **V. CONCLUSION**

16 The Commission dismisses the allegation that M&A Development, LLC, contributed to
17 the Committees in violation of 2 U.S.C. § 441b(a), *see Heckler v. Chaney*, 470 U.S. 821, 831
18 (1985), and cautions M&A Development, LLC, for its apparent violation of 2 U.S.C. § 441b(a).

⁶ The Commission has previously considered a specific regulation applicable to the use of corporate logos when promulgating regulations in response to the Supreme Court's decision in *Federal Election Commission v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238 (1986). The Commission considered alternative drafts and ultimately was unable to reach a majority decision. *See Corporate and Labor Organization Activity; Express Advocacy and Coordination with Candidates Explanation and Justification*, 60 Fed. Reg. 64260, 64268 (December 14, 1995). Nevertheless, as discussed above, and as observed by the Commission in MUR 5578 and AO 2007-10 after the 1995 rulemaking, the use of a corporate name or logo is something of value within the meaning of 2 U.S.C. § 441b(a).

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1 **FEDERAL ELECTION COMMISSION**

2
3 **FACTUAL AND LEGAL ANALYSIS**

4
5 **RESPONDENTS:** The Democratic National Committee **MUR 6110**
6 and Andrew Tobias,
7 in his official capacity as treasurer

8
9 Obama Victory Fund
10 and Andrew Tobias,
11 in his official capacity as treasurer

12
13 **I. GENERATION OF MATTER**

14
15 This matter was generated by a complaint filed with the Federal Election Commission by
16 Robert J. Kabel, on behalf of the District of Columbia Republican Committee. *See* 2 U.S.C.
17 § 437g(a)(1).

18 **II. INTRODUCTION**

19 The complaint alleges that the Democratic National Committee (“DNC”), and the Obama
20 Victory Fund (“OVF”) (together “Committees”) violated the Federal Election Campaign Act of
21 1971, as amended (“the Act”), by accepting prohibited corporate in-kind contributions and
22 failing to include the proper joint fundraising notice and disclaimers in solicitations for two
23 fundraising events that took place in September 2008: the “Concert for Change” and an event
24 held at a gym owned by VIDA Fitness in Washington, D.C. *See* 2 U.S.C. § 441b(a); 11 C.F.R.
25 § 102.17(c). OVF is a joint fundraising committee that disburses its proceeds to the DNC and
26 Obama for America (“OFA”), the principal campaign committee of Barack Obama for his 2008
27 presidential campaign.

28 **A. Concert for Change**

29 The Concert for Change (the “Concert”) was a fundraising event that took place on
30 September 20, 2008, at the Atlas Theater in Washington, D.C. According to one of the

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1 Concert's web pages, the Concert raised \$13,500 in contributions. The complaint alleged that
2 corporations sponsored the Concert and, therefore, that the DNC and OVF knowingly accepted
3 corporate contributions in violation of 2 U.S.C. § 441b(a), and the alleged sponsoring
4 corporations made prohibited corporate contributions in violation of 2 U.S.C. § 441b(a) or
5 facilitated contributions in violation of 11 C.F.R. § 114.2(f)(1). *See* Complaint at 3-4. The
6 complaint also alleged that the Concert's promotional materials constituted solicitations for joint
7 fundraising activity and, therefore, the DNC and OVF violated 11 C.F.R. § 102.17(c) by failing
8 to include joint fundraising notices in the solicitations. *See* Complaint at 4.

9 The businesses that allegedly made the prohibited in-kind corporate contributions are
10 Square Root Sales, Senate Realty Corporation, and M&A Development, LLC ("Businesses").
11 As discussed in greater detail below, it appears that the Businesses, which were identified in
12 some of the Concert's promotional materials as "sponsors" of the Concert, did not use their
13 general treasury funds to pay the costs of the Concert. Rather, individuals affiliated with the
14 Businesses used their personal funds to pay the costs of the Concert. OVF and the DNC asserted
15 in their response that they were unaware of the Concert until the complaint was filed and that the
16 Concert was not an official or authorized event. The Concert's organizer(s) were not identified
17 in the complaint and there is no information suggesting that they formed an enterprise with
18 ongoing activities or assets.

19 Consequently, the Commission dismisses the allegation that the OVF and the DNC
20 violated the Act based on the alleged receipt of prohibited corporate contributions from the
21 Businesses in connection with the Concert. Additionally, the Commission finds no reason to
22 believe that the OVF and the DNC violated 11 C.F.R. § 102.17(c) in connection with the
23 Concert.

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B. VIDA Fitness/Bang Salon Spa Fundraiser

The complaint also alleges that VIDA Fitness and Bang Salon Spa _____
_____ facilitating the making of contributions to OVF and that,
as a consequence, OVF accepted a prohibited corporate contribution. The complaint claims that
VIDA Fitness and Bang Salon Spa (“Bang Salon”) facilitated the making of contributions by
using their email accounts and a common list of their “customers and friends” to email
invitations/solicitations to a September 26, 2008 OVF fundraiser that was held at a VIDA Fitness
gym. Complaint at 2. Because it appeared that VIDA Fitness and Bang Salon never charged
OVF for the use of the email list, the complaint argues that _____
_____ OVF knowingly accepted, prohibited corporate contributions. *Id.* Bang Salon is the brand
name for Urban Salons, Inc. For the sake of clarity, this entity is herein referred to as “Bang
Salon.” In view of OVF’s status as a joint fundraising committee, the complaint also alleged that
the VIDA/Bang Salon emails should have contained a joint fundraising notice pursuant to 11
C.F.R. § 102.17(c). *See id.* at 2-3.

Because the available information suggests that neither the DNC nor OVF requested that
David von Storch, founder and CEO of VIDA Fitness and Bang Salon, use the VIDA/Bang
Salon email list and that von Storch used the list without the prior knowledge, approval, or
authorization of the DNC or OVF, the Commission finds no reason to believe the allegation that
OVF violated 2 U.S.C. § 441b(a) by knowingly receiving VIDA/Bang’s contribution of the
email list. Finally, because von Storch was an OVF fundraising volunteer that drafted the
VIDA/Bang email invitation/solicitation without the knowledge or authorization of OVF and its
lack of a joint fundraising notice was of limited impact, the Commission finds no reason to

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1 believe that OVF violated 11 C.F.R. § 102.17(c) based on the email solicitations sent by VIDA
2 Fitness and Bang Salon.

3 **III. CONCERT FOR CHANGE**

4 **A. Factual Summary**

5 According to the complaint, unknown individuals promoted the “Concert for Change” by
6 distributing flyers and signs near the Eastern Market Metro in Washington, D.C., and by
7 establishing web pages that solicited contributions on the DNC and OFA websites. Some of the
8 Concert’s promotional materials, which were attached to the complaint, state that the Businesses
9 were “in-kind sponsors” of the Concert.

10 The Concert’s unknown organizer(s) rented the Lang Theater, a space within the Atlas
11 Theater at 1338 H Street, N.E., in Washington, D.C., that normally rents for \$6,000, and
12 arranged for singer Steve Washington and the “Doug Elliot Orchestra” to perform. According to
13 the Concert’s promotional materials, the event included a cash bar and valet parking. The theater
14 also normally requires event organizers to hire security guards and pay insurance. Sound
15 equipment is not included in the cost of the theater and may also have been an additional
16 expense. According to its website, www.aconcertforchange.org, the event’s organizers were able
17 to raise \$13,500. Of this, it appears that the concert raised \$1,780 through online contributions
18 using its webpage on OFA’s MyBO website, \$155 through its pages on the DNC PartyBuilder
19 website, and rest were collected at the theater box office. The available information does not
20 indicate whether or how the theater box office collected the required contributor information and
21 forwarded the contributions to OVF (or DNC and OFA).¹

¹ The Commission has no information as to what the Concert’s organizers did with the contributions collected at the Atlas Theater box office.

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1 1. Concert for Change Sign

2
3 The complaint alleged that the Concert's organizer(s) distributed flyers and posted signs
4 for the Concert in the Eastern Market area of Washington, D.C. Complaint at 3. A sign,
5 submitted as an attachment to the complaint, describes the Concert as a "concert-cabaret
6 fundraiser for The Obama Campaign" and provides a website address,
7 www.aconcertforchange.org. The sign also states, below the official logo and web address of the
8 Obama campaign (OFA), "FUNDRAISER." The image of the OFA logo is of poor quality,
9 however, as if it was a copy enlarged many times. Near the bottom of that panel, it states "Many
10 thanks to our individual in-kind contributors (sponsors) affiliated with the following
11 organizations" above the names of five people and the names and logos of the Businesses. The
12 first name is that of Chase Alan Moore along with the name and logo of "Square Root Sales"
13 with text which states "real estate marketing, sales, and management." The second set of names,
14 Lisa Williams, Cher Castillo Freeman, and James Williams, is printed above the name and logo
15 of Senate Realty Corporation. The final name and logo combination is that of Anthony
16 Washington and M&A Development.

17 2. Democratic National Committee Websites

18 The Concert's organizers also posted a web page on the PartyBuilder section of the DNC
19 website, www.democrats.org/page/outreach/view/total/aconcertforchange, which solicited
20 donations.² The text of the web page states a fundraising goal of \$30,000. The Concert's web
21 page on the DNC web site also solicited online contributions. The Concert's DNC web page,
22 like the Concert's poster, stated that the Concert was a "fundraiser to support THE OBAMA

² PartyBuilder enables DNC supporters to create and manage a "personal fundraising homepage" for "keeping track of all personal fundraising."

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1 **CAMPAIGN**” (emphasis in original) and bore the Obama campaign name, logo, and website
2 address. However, the Concert’s DNC web page also stated that “100% of donations go directly
3 to the Obama Victory Fund.” The Concert’s DNC web page also stated that the “individual
4 donors will be recognized by the DNC.” Thus, it is unclear whether the recipient of
5 contributions made through this web page was the DNC or OVF.³ Moreover, if the recipient was
6 OVF, neither the Concert’s DNC web page nor the contribution page currently connected to the
7 link on the Concert’s web page include a joint fundraising notice. *See* 11 C.F.R. § 102.17(c).

8 Like the poster, the Concert’s DNC web page includes the same set of individual names
9 and corporate names and logos below the statement: “Many thanks to our generous gift-in-kind
10 sponsors.” The page also contains a graphic that, in addition to stating the name of the musical
11 entertainment at the Concert and the statement that it is a “fundraiser for The Obama Campaign,”
12 lists along its right side the names and corporate logos of M&A Development, Senate Realty,
13 and Square Root Sales under the Obama Campaign logo, Obama campaign website address, and
14 the title “In-Kind Sponsors.” No individuals’ names are listed with the corporate logos in this
15 graphic. At the bottom of the webpage, it states “Copyright 1995-2008 DNC Services Corp.,”
16 “Paid for by the Democratic National Committee,” the DNC address, and “This communication
17 is not authorized by any candidate or candidate’s committee.”⁴

18

³ On May 19, 2009, the Commission mailed a letter to the DNC asking it to clarify its response, specifically, which text on the Concert’s web page on the DNC’s Party Builder system was written by the Concert’s organizer(s) and which was written by the DNC, and whether, at the time of the Concert, contributions made through the Concert’s web page on the DNC’s web site were made to the DNC, OVF, or to another committee. The DNC did not respond.

⁴ A separate Concert web page on the DNC PartyBuilder website similar in content to the Concert’s DNC web pages described above is found at www.democrats.org/page/event/detail/4vkfp. The link on the page for making a contribution, in order to obtain a ticket to the Concert, directs the viewer to the Concert’s DNC website described above. This page lists Chase Moore as the host of the Concert.

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1 3. Businesses
2

3 The Concert's promotional materials list the Businesses and affiliated individuals as
4 "individual in-kind contribution sponsors," and one web page listed the Businesses as "In-Kind
5 Sponsors" without the names of any individuals. The Businesses identified in the promotional
6 materials are: (a) Square Root Sales, affiliated with Chase Alan Moore; (b) Senate Realty,
7 affiliated with Lisa Williams, Cher Castillo Freeman, and James Williams; and (c) M&A
8 Development, affiliated with Anthony Washington.

9 a. *Square Root Sales*

10 The Concert's promotional materials indicated that Chase Alan Moore was affiliated with
11 "Square Root Sales." He is also the registered agent for an entity called "Square Root, LLC."
12 The available information indicates that Square Root Sales is the name of a team of real estate
13 agents at Senate Realty Corporation which was to be distinguished from Square Root, LLC,
14 which had no connection to the Concert for Change. According to the website of Square Root
15 Sales, Moore is the leader of the Square Root Sales team. The available information also
16 indicates that one of the members of the Square Root Sales team is Steve Washington, the
17 performer at the Concert. The available information indicates that neither the Square Root Sales
18 team nor Square Root, LLC, made a contribution to the Concert. Rather, Moore, using personal
19 funds, made an in-kind contribution within the limits of the Act to support the Concert.

20 b. *Senate Realty Corporation*
21

22 Senate Realty Corporation is incorporated in Washington, D.C. Lisa Williams is Senate
23 Realty Corporation's principal broker and a co-owner; her co-owners are James C. Williams and
24 Cher Castillo, the other two individuals whose names appear on the Concert for Change
25 promotional materials with the Senate Realty Corporation name and logo. The available

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1 information indicates that Ms. Williams worked on the Concert for Change as a volunteer acting
2 in her personal capacity and not as a representative of Senate Realty, and that the use of the
3 Senate Realty logo was not meant to imply a corporate sponsorship of the event. The available
4 information also indicates that Ms. Williams made an in-kind contribution, paid by a check
5 drawn from her personal checking account, to pay for expenses related to the Concert, and that
6 no Senate Realty funds were used in connection with her contribution.

7 c. *M&A Development, LLC*

8 The available information indicates that M&A Development, LLC, made no contribution,
9 either by using its corporate treasury funds or through an in-kind contribution. M&A has no
10 employees, revenues, or expenses. The singer at the concert, Steve Washington, is the brother of
11 Anthony Washington, the person affiliated with M&A Development in the Concert's
12 promotional materials. The available information indicates that Anthony Washington,
13 personally, contributed \$1,000 to the event.

14 B. Analysis

15 1. Alleged Corporate Contributions
16

17 The complaint alleged that the Concert's promotional materials, including web pages
18 soliciting contributions on the DNC website, included the logos of three businesses identified as
19 "individual in-kind contributors (sponsors)," implying that the Democratic National Committee
20 and the Obama Victory Fund knowingly accepted prohibited corporate contributions. Complaint
21 at 3-4. Neither a federal candidate nor a political committee may knowingly accept a
22 contribution from a corporation. *See* 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(d). The DNC and
23 OVF did not disclose receiving contributions from the Businesses. *See* 2 U.S.C. § 434(b)(3).

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1 Corporations, such as Senate Realty Corporation, are prohibited from making any
2 contributions to candidates for federal office, including facilitating the making of a contribution
3 by using its corporate resources to engage in fundraising activities in connection with any federal
4 election. *See* 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(f)(1). A limited liability company (“LLC”)
5 such as M&A Development, LLC, is considered a corporation or a partnership under the Act
6 depending on whether it elects to be treated by the Internal Revenue Service as a corporation or a
7 partnership. *See* 11 C.F.R. § 110.1(g). If an LLC is considered to be a partnership, it may make
8 contributions to a candidate for federal office subject to the limit in 2 U.S.C. § 441a(a)(1)(A),
9 which was \$2,300 during the 2008 election cycle. *See* 11 C.F.R. § 110.1(e). A contribution by a
10 partnership is attributed to the partnership and to each partner. *Id.* By contrast, the available
11 information indicates that Square Root Sales is an unincorporated team of real estate agents
12 working for Senate Realty Corporation. Thus, it does not appear to be a separate legal entity
13 with its own resources.

14 It is not clear from the Concert’s promotional materials whether the Concert’s “sponsors”
15 were the named individuals acting in their personal capacity, or were the businesses associated
16 with those individuals. For instance, the Concert’s sign states “Many thanks to our *individual* in-
17 kind contributors (sponsors) affiliated with the following organizations” (emphasis added), and it
18 lists the names of individuals above their affiliated corporate logos. The clearest indication that
19 the Businesses may have made or facilitated contributions is found in the Concert’s DNC
20 webpage which includes a graphic that identifies the Businesses as the Concert’s “In-Kind
21 Sponsors” without any mention of individual contributors/sponsors. At the bottom of the
22 Concert’s DNC webpage, it lists both individuals and the Businesses with which they are
23 affiliated as “gift-in-kind sponsors.”

1 The available information indicates that no corporate or other business entity's funds
2 were used to pay for the costs of the Concert. Rather, individuals named in the promotional
3 materials used their personal funds and volunteered in their individual capacity. A related issue,
4 however, is whether the inclusion of business entity names and logos in the Concert's
5 promotional materials constituted a contribution by those businesses.

6 Although the use of the companies' names and logos in this matter may have constituted
7 a contribution from the Businesses to the DNC and OVF, for the reasons set forth below, the
8 Commission dismisses the allegation that the DNC and OVF violated the Act by knowingly
9 accepting corporate contributions from the Businesses.

10 A contribution includes anything of value made by any person for the purpose of
11 influencing a Federal election. 2 U.S.C. § 431(8)(A)(i). The term "anything of value"
12 encompasses any goods or services provided without charge or at less the usual and normal
13 charge unless otherwise specifically exempted. *See* 11 C.F.R. § 100.52(d)(1). Corporate names,
14 trademarks, and service marks can be valuable corporate resources, and corporations may invest
15 substantial resources in choosing a trademark, developing its value, and defending it. A
16 trademark is a limited property right in a "particular word, phrase or symbol." *See New Kids on*
17 *the Block v. News America Pub., Inc.*, 971 F.2d 302, 306 (9th Cir. 1992). Trade names are also
18 protected when they acquire a "secondary meaning" in that they "symbolize a particular
19 business." *Madrigal Audio Labs., Inc. v. Cello, Ltd.*, 799 F.2d 814, 822 (2d Cir. 1986).

20 A corporation's name and trademark, therefore, are things of value owned by the
21 corporation. Because the Act prohibits corporations from contributing anything of value to
22 committees, or using their resources to facilitate contributions to committees, a donation by a
23 corporation of its trademark to a committee (for example, to use on a solicitation for

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1 contributions to a committee or to indicate the corporation's support for a candidate) would
2 constitute an impermissible corporate contribution.

3 Accordingly, the Commission has previously considered corporate names and trademarks
4 to be things of value. In MUR 5578 (Wetterling for Congress), the complaint alleged that a
5 committee received a corporate contribution when it allegedly used a corporation's trademark
6 (America's Most Wanted) in a campaign ad. *See* MUR 5578 Complaint at 1-2. The
7 Commission approved the recommendation of the General Counsel's Office to find no reason to
8 believe that Wetterling for Congress violated the Act for several reasons, including that the
9 committee paid for all advertising expenses, the advertisement did not include or suggest a
10 corporate endorsement, and the fact that the alleged corporate logo used in the campaign ad at
11 issue was not the alleged contributing corporation's logo. *See* MUR 5578 Certification of
12 Commission's Actions on February 22, 2006; First General Counsel's Report at 4-8.

13 In Advisory Opinion 2007-10 (Reyes), the Commission concluded that a committee
14 holding a fundraising golf tournament could not give recognition to its contributors by posting
15 signs at particular holes with the contributors' names and job titles as well as the name,
16 trademark, or service mark of their employers. *See* AO 2007-10 (Reyes) at 3. The AO requestor
17 stated that its inclusion of the names, trademarks, and service marks of its contributors' corporate
18 employers was intended to encourage contributions. *Id.* at 2. The Commission concluded that
19 corporate names, trademarks, and service marks "are corporate resources" and, because neither a
20 corporation nor its agents may use the corporation's resources to facilitate the making of
21 contributions to a federal political committee, the proposed activity would violate the Act. *Id.* at
22 2-3. In AO 2007-10 (Reyes), the Commission distinguished AO 1984-43 (Brunswick) and AO
23 1978-77 (Aspin), in which the Commission concluded that a candidate's endorsers may be

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1 identified with their corporate positions in campaign-funded advertisements, noting that neither
2 involved the use of corporate resources to facilitate contributions and that both predated the
3 Commission's corporate facilitation regulations. *Id.* at 3; *see also Corporate and Labor*
4 *Organization Activity; Express Advocacy and Coordination with Candidates Explanation and*
5 *Justification*, 60 Fed. Reg. 64260, 64274-75 (Dec. 14, 1995).⁵

6 In contrast to the circumstances in *Wetterling*, the DNC and OVF did not pay for the
7 expenses associated with the Concert's promotional materials, some of the Concert's
8 promotional materials suggest a corporate endorsement, and the names and logos used in the
9 Concert's promotional materials were those of the Businesses. Although the corporate names
10 and logos in the Concert's solicitations were things of value, the value of the names and logos of
11 these particular businesses is likely insubstantial, and the fundraising event was relatively modest
12 in size. The Concert raised \$13,500 and was attended by less than 200 people.

13 The DNC and OVF state in their response that neither the "DNC nor OVF ever hosted a
14 'Concert for Change' fundraising event" and that, although the Concert's materials suggest it
15 would benefit the DNC or OVF, the Concert was not an official, authorized, or sanctioned event,
16 and it was conducted without the cooperation or approval of the DNC or OVF. DNC/OVF
17 Response at 3. According to the DNC and OVF, promotion of the event on the DNC and OFA
18 websites "does not transform an otherwise unauthorized event into an official, sanctioned DNC
19 or OVF event." *Id.* The DNC stated that it does not "pre-screen or otherwise review" what

⁵ The Commission has previously considered a specific regulation applicable to the use of corporate logos when promulgating regulations in response to the Supreme Court's decision in *Federal Election Commission v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238 (1986). The Commission considered alternative drafts and ultimately was unable to reach a majority decision. *See Corporate and Labor Organization Activity; Express Advocacy and Coordination with Candidates Explanation and Justification*, 60 Fed. Reg. 64260, 64268 (December 14, 1995). Nevertheless, as discussed above, and as observed by the Commission in MUR 5578 and AO 2007-10 after the 1995 rulemaking, the use of a corporate name or logo is something of value within the meaning of 2 U.S.C. § 441b(a).

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1 appears on its PartyBuilder platform, which was used to promote the Concert. *Id.* Therefore, the
2 DNC and OVF assert, they did not knowingly accept prohibited corporate contributions. *Id.*

3 The DNC encouraged its supporters to engage in fundraising and provided the necessary
4 tools to do so, apparently without warnings to make sure fundraising efforts complied with the
5 Act, including that corporate resources could not be used to pay fundraising costs. As noted
6 above, the available information indicates that none of the Businesses contributed money directly
7 to the Committees or paid for the costs of the Concert. The only contributions made by the
8 Businesses appear to have been in-kind contributions resulting from the use of the company
9 names and logos to solicit contributions to the Committees. Nevertheless, given the modest size
10 of the fundraising event, which raised only \$13,500 and was attended by less than 200 people,
11 and the fact that the value of the company names and logos is not likely substantial in this case,
12 further action by the Commission to investigate whether the Committees knowingly accepted or
13 received in-kind contributions that they failed to disclose and that violated the Act's contribution
14 limitations or source prohibitions is not warranted. *See Heckler v. Chaney*, 470 U.S. 821, 831
15 (1985).

16 Accordingly, the Commission dismisses the allegation that the Democratic National
17 Committee and the Obama Victory Fund, and Andrew Tobias, acting in his official capacity as
18 their treasurer, violated the Act based on the alleged receipt of contributions from Square Root
19 Sales, Senate Realty Corporation, and M&A Development, LLC.

20 2. Alleged Failure to Include Joint Fundraising Notices

21 The complaint alleges that the Concert's promotional materials solicit contributions to
22 OVF, which is a joint fundraising committee, and that the solicitations fail to include the proper
23

1 joint fundraising notice.⁶ Complaint at 4. As discussed above, some of the Concert's
2 promotional materials appear to solicit contributions to OVF, while others solicit contributions to
3 OFA. The DNC's response stated that it cannot be held liable for the failure to include joint
4 fundraising notices on the Concert's promotional materials because the Concert was not an
5 authorized event. DNC/OVF Response at 3.

6 It does not appear that the Concert's organizers were authorized by the DNC to raise
7 funds for OVF. Relevant to this matter, OVF is a registered joint fundraising committee of the
8 DNC and OFA. See OVF Statement of Organization (FEC Form 1), dated June 5, 2008. The
9 Concert's organizers were not OVF participants, nor were they a party to the agreement to
10 fundraise jointly. The DNC specifically denied that the Concert was an authorized event, and
11 denied any knowledge of its existence. See DNC/OVF Response at 3. Although the DNC
12 encouraged its supporters to engage in fundraising for the DNC and gave them the resources to
13 do so, including the PartyBuilder fundraising tools and space on the DNC website, there is no
14 information to suggest that the DNC authorized the Concert's organizers to engage in
15 fundraising for OVF, or provided any tools to do so.

16 Moreover, there is no information to suggest that the DNC was aware of the Concert
17 organizers' attempt to solicit funds for OVF or that OVF ever received funds from the concert
18 organizers' efforts. The Concert's online contributions were made through contribution pages on
19 the DNC and OFA websites. There is no indication that the Concert's organizers had any control

⁶ As cited to in the complaint, 11 C.F.R. § 102.17(c)(2), states that for joint fundraising activity conducted under this section, "[i]n addition to any notice required under 11 C.F.R. § 110.11, a joint fundraising notice shall be included with every solicitation for contributions." Under the regulations, such joint fundraising notices must include the names of all committees participating in the joint fundraising activity, the allocation formula to be used to distribute joint fundraising proceeds, a statement informing contributors that they may designate contributions for a particular participant in the joint fundraising activity notwithstanding the allocation formula, and notice that the formula may change to avoid the making and receipt of excessive contributions. See 11 C.F.R. § 102.17(c)(2)(i)(A)-(D).

1 over the recipient(s) of online contributions made on the DNC website, even if they had intended
2 the funds to go to OVF. Although the Concert's organizers created the Concert's sign and wrote
3 some of the text which appeared on part of the Concert's DNC webpage, such as the name, date,
4 and location of the event, it nonetheless appears that the content of the DNC website related to
5 the making of online contributions was not under the control of the Concert's organizers. The
6 Commission does not have any information to suggest that contributions made through the DNC
7 website, unless explicitly stated otherwise, went to any committee other than the DNC.

8 Thus, the available information does not give rise to a reasonable inference that the DNC
9 may have authorized the Concert's organizers to engage in fundraising for OVF. Therefore, the
10 Commission finds no reason to believe that the Democratic National Committee and the Obama
11 Victory Fund, and Andrew Tobias acting in his official capacity as their treasurer, violated
12 11 C.F.R. § 102.17(c) by failing to include a joint fundraising notice in the Concert's
13 solicitations.

14 **IV. VIDA FITNESS/BANG SALON FUNDRAISER**

15 **A. Factual Summary**

16 VIDA Fitness is a Subchapter S corporation and Bang Salon is the trade name of Urban
17 Salons, Inc. The available information indicates that on September 19, 2008, VIDA Fitness and
18 Bang Salon sent identical emails to 20,000 of their "customers and friends" that invited them to
19 an official OVF fundraiser and solicited contributions to OVF. See Complaint at 1. The email
20 list was one that the two businesses shared and the fundraiser was held on September 26, 2008,
21 in Washington, D.C., at the site of a VIDA Fitness gym and a Bang Salon. See DNC/OVF
22 Response at 1. OVF also sent 500 invitations to the event. See DNC/OVF Response at 1-2.

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1 The complaint alleges that this use of the VIDA/Bang email list constituted prohibited
2 corporate facilitation of contributions to OVF in violation of 2 U.S.C. § 441b(a) and 11 C.F.R.
3 § 114.2(f)(1). *See* Complaint at 2. Furthermore, the complaint alleges that in view of OVF's
4 status as a joint fundraising committee, the email solicitations failed to include joint fundraising
5 notices as required by 11 C.F.R. § 102.17(c)(2)(i).

6 The available information indicates that David von Storch, founder and CEO of both
7 VIDA Fitness and Bang Salon, sent the emails in his personal capacity as an individual volunteer
8 for the OVF. Von Storch attempted to make clear that the fundraiser was not corporate-
9 sponsored or funded by including a disclaimer in the emails that stated "VIDA and Bang do not
10 endorse nor support any political candidate, but do encourage their members and friends to get
11 involved and participate in the electoral process." In their response, the DNC and OVF claim
12 that von Storch made the decision to send the invitations/solicitations using the VIDA/Bang
13 email list without consulting with Tom Petrillo of the DNC's Finance Department, with whom
14 he had made the arrangements for the use of the VIDA gym for the OVF fundraiser. *See*
15 DNC/OVF Response at 2. The available information indicates that Von Storch subsequently
16 compensated VIDA Fitness \$3,000 for his use of the email list, which contained 20,000 email
17 addresses, and for his use of the internet. OVF has disclosed this contribution.

18 The email that von Storch sent to the 20,000 recipients on the VIDA/Bang email list
19 stated that the cost of attendance was either \$100 for a "Friend," \$250 for a "Supporter," or
20 \$2,500 for "Host committee members." Those wishing to RSVP were directed to a contribution
21 page on OFA's website, <https://donate.barackobama.com/page/contribute/DCSJP>. The
22 invitation/solicitation sent by von Storch did not provide any other means of submitting an RSVP

1 or making a contribution. The available information indicates that the contribution webpage
2 included the following disclaimer:

3 The first \$2,300 of each contribution from an individual will be allocated to Obama for
4 America and will be considered designated for the general election. The next \$28,500 of
5 each contribution from an individual will be allocated to the Democratic National
6 Committee. Any contributor may designate his or her contribution for a particular
7 participant. (Participants are Obama for America and the DNC). The allocation formula
8 above may change if any contributor makes a contribution that, when allocated, would
9 exceed the amount that the contributor may lawfully give to either participant.

10
11 The DNC and OVF deny knowingly accepting a contribution as a result of von Storch's
12 use of the VIDA and Bang email list. *See* DNC/OVF Response at 2. They note that they did not
13 request or receive the email list itself and von Storch, a volunteer fundraiser, used the
14 VIDA/Bang email list without prior approval or authorization. *Id.* The DNC and OVF further
15 assert that they did not request that von Storch send the email, that von Storch lacked the actual
16 authority, express or implied, to solicit contributions on behalf of the DNC or OVF, that he was
17 not an agent of the DNC or OVF. *Id.* Consequently, they assert they should not be held liable for
18 his actions. *Id.*

19

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1 **B. Analysis**

2
3 1. Use of the VIDA/Bang Email List

4 A corporation is prohibited from making a contribution in connection with a federal
5 election under the Act. *See* 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(b). In addition, neither a
6 federal candidate nor a political committee may knowingly accept a contribution from a
7 corporation. *See* 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(d). The Commission's regulations
8 further provide that a corporation may not facilitate the making of a contribution by using its
9 corporate resources to engage in fundraising activities for any federal election. *See* 11 C.F.R.
10 § 114.2(f)(1). The regulations provide examples of conduct that constitute corporate facilitation,
11 including the use of a corporate customer list, to send invitations to individuals not within the
12 restricted class to fundraisers without advance payment. *See* 11 C.F.R. § 114.2(f)(2).

13 Corporations such as VIDA Fitness and Bang Salon, which do not have separate
14 segregated funds, are permitted to solicit contributions to be sent directly to candidates, but those
15 solicitations are limited solely to its restricted class, consisting of its stockholders and executive
16 or administrative personnel, and their families. 2 U.S.C. § 441b(b)(2)(A); 11 C.F.R. §§ 114.1(j)
17 and 114.2(f). Moreover, corporate facilitation may result if the corporation uses its list of
18 customers, who are not within the restricted class, to solicity contributions or distribute
19 invitations to fundraisers without advance payment for the fair market value of the list. *See*
20 11 C.F.R. § 114.2(f)(2)(i)(C).

21 Thus, when VIDA fitness and Bang Salon (through David von Storch, their founder and
22 CEO) emailed a list of 20,000 VIDA Fitness and Bang Salon customers and friends to distribute
23 the OVF fundraiser invitation without advance payment, VIDA Fitness and Bang Salon solicited
24 outside their restricted classes and facilitated the making of contributions to OVF. While Mr.

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1 von Storch reimbursed VIDA after the complaint was filed, such reimbursement may mitigate
2 but not vitiate a violation.

3 The DNC and OVF assert that neither the DNC nor OVF requested that von Storch use
4 the VIDA/Bang email list and his use of the list was done without the prior knowledge, approval,
5 or authorization of the DNC or OVF. There is no available information suggesting otherwise.
6 Consequently, the Commission finds no reason to believe that the Obama Victory Fund and
7 Andrew Tobias, in his official capacity as treasurer, violated 2 U.S.C. § 441b(a) in connection
8 with the VIDA Fitness/Bang Salon event.

9 2. Joint Fundraising Notices

10 The invitations and solicitations sent to the 20,000 email addresses on the VIDA/Bang
11 email list included solicitations for contributions to OVF, a joint fundraising committee.
12 Solicitations for joint fundraising activity must include certain information pursuant to 11 C.F.R.
13 § 102.17(c), including the names of all committees participating in the joint fundraising activity,
14 the allocation formula to be used to distribute joint fundraising proceeds, a statement informing
15 contributors that they may designate contributions for a particular participant in the joint
16 fundraising activity notwithstanding the allocation formula, and that the formula may change to
17 avoid the making and receipt of excessive contributions.

18 Although the email drafted by von Storch did not contain the required joint fundraising
19 notice, the only means of making the contribution solicited in the email was to use the link
20 included in the email. See Exhibit A to Von Storch Declaration. The web link in the
21 VIDA/Bang email invitation/solicitation directed contributors to a joint OVF-DNC webpage
22 created specifically for the fundraiser where they could make an online contribution that

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1 included the required joint fundraising notice.⁷ The response of the DNC/OVF also includes a
2 copy of the OVF invitation/solicitation for the fundraiser which, unlike the VIDA/Bang email,
3 includes a second page with a complete joint fundraising notice.

4 Under the circumstances, including that David von Storch was an OVF fundraising
5 volunteer who, according to OVF, drafted an email soliciting contributions without the
6 knowledge or authorization of OVF, and that a joint fundraising notice was included in both the
7 official OVF invitation/solicitation and the joint OVF-DNC webpage to which the VIDA/Bang
8 unauthorized solicitation directed contributors, the Commission finds no reason to believe that
9 the Obama Victory Fund violated 11 C.F.R. § 102.17(c) with regard to the email solicitations
10 sent by VIDA Fitness and Bang Salon.

11 **V. CONCLUSION**

12 The Commission dismisses the allegation that the Democratic National Committee and
13 the Obama Victory Fund, and Andrew Tobias, acting in his official capacity as their treasurer,
14 violated the Act based on the alleged receipt of contributions from Square Root Sales, Senate
15 Realty Corporation, and M&A Development, LLC, as a matter of prosecutorial discretion. *See*
16 *Heckler v. Chaney*, 470 U.S. 821, 831 (1985). Additionally, the Commission finds no reason to
17 believe that the Democratic National Committee and the Obama Victory Fund, and Andrew
18 Tobias acting in his official capacity as their treasurer, violated 11 C.F.R. § 102.17(c) by failing
19 to include joint fundraising notices in the Concert's solicitations. There is no reason to believe
20 that the Obama Victory Fund and Andrew Tobias, in his official capacity as treasurer, violated
21 2 U.S.C. § 441b(a) in connection with the VIDA fitness/Bang Salon event. Additionally, there is

⁷ At this time, that link re-directs contributors to <https://donate.barackobama.com/page/contribute/dnc08main>, which appears to be a page on the OFA website (now part of the DNC) and does not include a joint fundraising notice.

- 1 no reason to believe that the Obama Victory Fund violated 11 C.F.R. § 102.17(c) with regard to**
- 2 the email solicitations sent by VIDA Fitness and Bang Salon.**

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1 11 C.F.R. § 102.17(c) by failing to include joint fundraising notices in the solicitations. *See*
2 Complaint at 4.

3 The businesses that allegedly made the prohibited in-kind corporate contributions are
4 Square Root Sales, Senate Realty Corporation, and M&A Development, LLC (“Businesses”).
5 As discussed in greater detail below, it appears that the Businesses, which were identified in
6 some of the Concert’s promotional materials as “sponsors” of the Concert, did not use their
7 general treasury funds to pay the costs of the Concert. Rather, individuals affiliated with the
8 Businesses used their personal funds to pay the costs of the Concert.

9 OFA asserted in its response that it was unaware of the Concert until the complaint was
10 filed and that the Concert was not an official or authorized event. The Concert’s organizer(s)
11 were not identified in the complaint and there is no information suggesting that they formed an
12 enterprise with ongoing activities or assets.

13 For the reasons set forth below, the Commission dismisses the allegation that OFA
14 violated the Act based on the alleged receipt of prohibited corporate contributions from the
15 Businesses in connection with the Concert. Additionally, the Commission finds no reason to
16 believe that OFA violated 11 C.F.R. § 102.17(c) in connection with the Concert.

17 **III. FACTUAL SUMMARY**

18 According to the complaint, unknown individuals promoted the “Concert for Change” by
19 distributing flyers and signs near the Eastern Market Metro in Washington, D.C., and by
20 establishing web pages that solicited contributions on the OFA and DNC websites. Some of the
21 Concert’s promotional materials, which were attached to the complaint, state that the Businesses
22 were “in-kind sponsors” of the Concert. The Concert’s unknown organizer(s) rented the Lang
23 Theater, a space within the Atlas Theater at 1338 H Street, N.E., in Washington, D.C., that

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1 normally rents for \$6,000, and arranged for singer Steve Washington and the “Doug Elliot
2 Orchestra” to perform. According to the Concert’s promotional materials, the event included a
3 cash bar and valet parking. The theater also normally requires event organizers to hire security
4 guards and pay insurance. Sound equipment is not included in the cost of the theater and may
5 also have been an additional expense. According to its website, www.aconcertforchange.org, the
6 event’s organizers were able to raise \$13,500. Of this, it appears that the concert raised \$1,780
7 through online contributions using its webpage on OFA’s MyBO website, \$155 through its pages
8 on the DNC PartyBuilder website, and rest were collected at the theater box office. The
9 available information does not indicate whether or how the theater box office collected the
10 required contributor information and forwarded the contributions to OVF (or OFA or DNC).¹

11 **A. Concert for Change Sign**

12
13 The complaint alleged that the Concert’s organizer(s) distributed flyers and posted signs
14 for the Concert in the Eastern Market area of Washington, D.C. Complaint at 3. A sign,
15 submitted as an attachment to the complaint, describes the Concert as a “concert-cabaret
16 fundraiser for The Obama Campaign” and provides a website address,
17 www.aconcertforchange.org. The sign also states, below the official logo and web address of the
18 Obama campaign (OFA), “FUNDRAISER.” *Id.* The image of the OFA logo is of poor quality,
19 however, as if it was a copy enlarged many times. Near the bottom of that panel, it states “Many
20 thanks to our individual in-kind contributors (sponsors) affiliated with the following
21 organizations” above the names of five people and the names and logos of the Businesses. *Id.*
22 The first name is that of Chase Alan Moore along with the name and logo of “Square Root

¹ The Commission has no information as to what the Concert’s organizers did with the contributions collected at the Atlas Theater box office.

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1 Sales” with text which states “real estate marketing, sales, and management.” The second set of
2 names, Lisa Williams, Cher Castillo Freeman, and James Williams, is printed above the name
3 and logo of Senate Realty Corporation. The final name and logo combination is that of Anthony
4 Washington and M&A Development.

5 **B. Obama For America Website**

6
7 The Concert’s sign includes a website address for the Concert,
8 www.aconcertforchange.org. That web address redirects visitors to a Concert webpage on the
9 My Barack Obama (“MyBO”) section of the OFA website. The MyBO section of the OFA
10 website encouraged and enabled Obama’s supporters to create accounts, solicit votes and
11 contributions, and organize events.²

12 At the top of the Concert’s page on MyBO, there is a graphic that includes the portion of
13 the Concert’s sign that depicts the singer, states that it is a fundraiser for the “Obama Campaign,”
14 and lists the names and corporate logos of M&A Development, Senate Realty, and Square Root
15 Sales under the Obama Campaign logo, Obama campaign website address, and the title
16 “Individual in-kind contributor affiliations.” No individuals’ names are listed with the corporate
17 names and logos in this graphic. The Concert’s MyBO page also includes text that details the
18 Concert’s date, location, the phone number of the theater’s box office, and the cost of

² The link from the main page of the Obama campaign website to its MyBO section states “ORGANIZE LOCALLY WITH OUR ONLINE TOOLS.” An instructional video posted on the MyBO website teaches supporters how to use these tools. For example, by typing their address, supporters could obtain from OFA a list of their neighbors to contact, flyers to print and hand out, and the means to report back the results of their contacts with voters so that the campaign “can capture and use that information.” Also, as the Concert’s web page demonstrates, the MyBO site enabled supporters to create their own web page that solicited contributions, send email messages to their contacts, and organize their own events. The Obama supporters’ organizing performance statistics (e.g., events attended, events organized, contributions raised) are recorded and displayed. For fundraising, the site enables the supporter to set a fundraising goal, email their contacts with a personal message soliciting contributions, and track the contributions they raise. The Concert’s page on the MyBO site includes a title near the top of the page that states “Personal Fundraising.” The MyBO site, including its fundraising section and instructional video, does not contain any warnings that contributions should not be raised using the funds or resources of sources prohibited by the Act, such as corporations, labor unions, and foreign nationals.

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1 tickets/donations. There is also a link for making contributions online that resembles a
2 thermometer indicating the degree to which the Concert's fundraising goal has been met. It
3 appears that the Concert for Change organizer(s) set a goal of \$15,000 or \$30,000 (the Concert's
4 web page inconsistently indicates both of these figures as the Concert's fundraising goal). See
5 text describing the Concert for Change states that contributions will go to OVF, that "your
6 donation is your ticket," and that the box office will have a record of "your" donation. The
7 minimum donation was \$35 although the suggested donation was \$100-500 and the maximum
8 donation was \$4,600. The page concludes with the statement "Many thanks to our generous
9 individual in-kind contributing sponsors" and the same list of names and companies as in the
10 sign described above.

11 Consistent with the sign described above, which indicated that the Concert was a
12 fundraiser to benefit OFA, the MyBO online contribution link on the Concert's webpage
13 includes the text, "Obama '08," which suggests that contributions made through the website
14 were made to OFA. However, the Concert's web page on MyBO also states that "100% of ALL
15 donations go directly to the Obama Victory Fund," the OFA/DNC joint fundraiser.³ Thus, it may
16 have been unclear to contributors whether the recipient of the contributions made through this
17 web page was OFA or OVF. Neither the Concert's MyBO web page nor the contribution page
18

³ On May 19, 2009, the Commission mailed a letter to OFA asking it to clarify its response, specifically, which text on the Concert's MyBO web page was written by the Concert's organizer and which was written by OFA, and whether, at the time of the Concert, contributions made through OFA's MyBO web site were made to OFA, to OVF, or to another committee. OFA did not respond.

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1
2 currently connected to the contribution link on the Concert's MyBO web page contain a joint
3 fundraising notice.⁴ See 11 C.F.R. § 102.17(c).

4 **C. Businesses**

5
6 The Concert's promotional materials list the Businesses and affiliated individuals as
7 "individual in-kind contribution sponsors," and one web page listed the Businesses as "In-Kind
8 Sponsors" without the names of any individuals. The Businesses identified in the promotional
9 materials are: (a) Square Root Sales, affiliated with Chase Alan Moore; (b) Senate Realty,
10 affiliated with Lisa Williams, Cher Castillo Freeman, and James Williams; and (c) M&A
11 Development, affiliated with Anthony Washington.

12 **1. Square Root Sales**

13 The Concert's promotional materials indicated that Chase Alan Moore was affiliated with
14 "Square Root Sales." He is also the registered agent for an entity called "Square Root, LLC."
15 The available information indicates that Square Root Sales is the name of a team of real estate
16 agents at Senate Realty Corporation which was to be distinguished from Square Root, LLC,
17 which had no connection to the Concert for Change. According to the website of Square Root
18 Sales, Moore is the leader of the Square Root Sales team. The available information also
19 indicates that one of the members of the Square Root Sales team is Steven Washington, the

⁴ Currently, a disclaimer on the MyBO site says that it is being maintained by "Organize for America," a project of the Democratic National Committee. The donation link on the website leads to a page stating, in part: "Our success required unprecedented resources, and the Democratic National Committee played a major role on the ground efforts that generated record turnout up and down the ticket . . . Please make a donation to the DNC to help fund the efforts it undertook in 2008." Organize for America is the group created within the DNC after the November 2008 election to continue the grassroots organizing begun by OFA and assume control of A's list of 13 million email addresses. See Chris Cillizia, *Obama Announces Organizing for America* (January 17, 2009) found at <http://voices.washingtonpost.com/thefix/white-house/obama-announces-organizing-for.html>; see also Jim Rutenberg and Adam Nagourney, *Melding Obama's Web to a YouTube Presidency* (January 25, 2009) found at <http://www.nytimes.com/2009/01/26/us/politics/26grassroots.html>.

1 performer at the Concert. The available information indicates that neither the Square Root Sales
2 team nor Square Root, LLC, made a contribution to the Concert. Rather, Moore, using personal
3 funds, made an in-kind contribution within the limits of the Act to support the Concert.

4 2. Senate Realty Corporation

5
6 Senate Realty Corporation is incorporated in Washington, D.C. Lisa Williams is Senate
7 Realty Corporation's principal broker and a co-owner; her co-owners are James C. Williams and
8 Cher Castillo, the other two individuals whose names appear on the Concert for Change
9 promotional materials with the Senate Realty Corporation name and logo. The available
10 information indicates that Ms. Williams worked on the Concert for Change as a volunteer acting
11 in her personal capacity and not as a representative of Senate Realty, and that the use of the
12 Senate Realty logo was not meant to imply a corporate sponsorship of the event. The available
13 information also indicates that Ms. Williams made an in-kind contribution, paid by a check
14 drawn from her personal checking account, to pay for expenses related to the Concert, and that
15 no Senate Realty funds were used in connection with her contribution.

16 3. M&A Development, LLC

17 The available information indicates that M&A Development, LLC, made no contribution,
18 either by using its corporate treasury funds or through an in-kind contribution. M&A has no
19 employees, revenues, or expenses. The singer at the concert, Steve Washington, is the brother of
20 Anthony Washington, the person affiliated with M&A Development in the Concert's
21 promotional materials. The available information indicates that Anthony Washington,
22 personally, contributed \$1,000 to the event.

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2 **IV. ANALYSIS**

3 **A. Alleged Corporate Contributions**

4
5 The complaint alleged that the Concert's promotional materials, including web pages
6 soliciting contributions on the OFA website, included the logos of three businesses identified as
7 "individual in-kind contributors (sponsors)," implying that Obama for America knowingly
8 accepted prohibited corporate contributions. Complaint at 3-4. Neither a federal candidate nor a
9 political committee may knowingly accept a contribution from a corporation. *See* 2 U.S.C. §
10 441b(a); 11 C.F.R. § 114.2(d). OFA did not disclose receiving contributions from the
11 Businesses. *See* 2 U.S.C. § 434(b)(3).

12 Corporations, such as Senate Realty Corporation, are prohibited from making any
13 contributions to candidates for federal office, including facilitating the making of a contribution
14 by using its corporate resources to engage in fundraising activities in connection with any federal
15 election. *See* 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(f)(1). A limited liability company ("LLC")
16 such as M&A Development, LLC, is considered a corporation or a partnership under the Act
17 depending on whether it elects to be treated by the Internal Revenue Service as a corporation or a
18 partnership. *See* 11 C.F.R. § 110.1(g). If an LLC is considered to be a partnership, it may make
19 contributions to a candidate for federal office subject to the limit in 2 U.S.C. § 441a(a)(1)(A),
20 which was \$2,300 during the 2008 election cycle. *See* 11 C.F.R. § 110.1(e). A contribution by a
21 partnership is attributed to the partnership and to each partner. *Id.* By contrast, the available
22 information indicates that Square Root Sales is an unincorporated team of real estate agents
23 working for Senate Realty Corporation. Thus, it does not appear to be a separate legal entity
24 with its own resources.

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1 It is not clear from the Concert's promotional materials whether the Concert's "sponsors"
2 were the named individuals acting in their personal capacity, or were the businesses associated
3 with those individuals. For instance, the Concert's sign states "Many thanks to our *individual in-*
4 *kind contributors (sponsors) affiliated with the following organizations*" (emphasis added), and it
5 lists the names of individuals above their affiliated corporate logos. The Concert's MyBO web
6 page also thanks the Concert's "generous individual in-kind contribution sponsors" and lists the
7 same individual names and business names. The Concert's MyBO webpage also includes a
8 graphic that identifies the Businesses as "Individual in-kind contributor affiliations" but does not
9 list the individuals associated with the Businesses within the graphic.

10 The available information indicates that no corporate or other business entity's funds
11 were used to pay for the costs of the Concert. Rather, individuals named in the promotional
12 materials used their personal funds and volunteered in their individual capacity.⁵ A related issue,
13 however, is whether the inclusion of business entity names and logos in the Concert's
14 promotional materials constituted a contribution by those businesses.

15 Although the use of the companies' names and logos in this matter may have constituted
16 a contribution from the Businesses to the Committees, for the reasons set forth below, we
17 recommend that the Commission dismiss the allegation that OFA violated the Act by knowingly
18 accepting contributions from the Businesses.

19 A contribution includes anything of value made by any person for the purpose of
20 influencing a Federal election. 2 U.S.C. § 431(8)(A)(i). The term "anything of value"

⁵ A search of the FEC disclosure database did not reveal any disclosures by OFA indicating that they received contributions from the individuals named in the Concert's promotional materials. The available information indicates that Lisa Williams disclosed a \$900.87 personal in-kind contribution to OFA, comprising a September 29, 2008, payment to reserve the Atlas Theater for the Concert.

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1 encompasses any goods or services provided without charge or at less the usual and normal
2 charge unless otherwise specifically exempted. *See* 11 C.F.R. § 100.52(d)(1). Corporate names,
3 trademarks, and service marks can be valuable corporate resources, and corporations may invest
4 substantial resources in choosing a trademark, developing its value, and defending it. A
5 trademark is a limited property right in a “particular word, phrase or symbol.” *See New Kids on*
6 *the Block v. News America Pub., Inc.*, 971 F.2d 302, 306 (9th Cir. 1992). Trade names are also
7 protected when they acquire a “secondary meaning” in that they “symbolize a particular
8 business.” *Madrigal Audio Labs., Inc. v. Cello, Ltd.*, 799 F.2d 814, 822 (2d Cir. 1986).

9 A corporation’s name and trademark, therefore, are things of value owned by the
10 corporation. Because the Act prohibits corporations from contributing anything of value to
11 committees, or using their resources to facilitate contributions to committees, a donation by a
12 corporation of its trademark to a committee (for example, to use on a solicitation for
13 contributions to a committee or to indicate the corporation’s support for a candidate) would
14 constitute an impermissible corporate contribution.

15 Accordingly, the Commission has previously considered corporate names and trademarks
16 to be things of value. In MUR 5578 (Wetterling for Congress), the complaint alleged that a
17 committee received a corporate contribution when it allegedly used a corporation’s trademark
18 (America’s Most Wanted) in a campaign ad. *See* MUR 5578 Complaint at 1-2 . The
19 Commission approved the recommendation of the General Counsel’s Office to find no reason to
20 believe that Wetterling for Congress violated the Act for several reasons, including that the
21 committee paid for all advertising expenses, the advertisement did not include or suggest a
22 corporate endorsement, and the fact that the alleged corporate logo used in the campaign ad at

1 issue was not the alleged contributing corporation's logo. *See* MUR 5578 Certification of
2 Commission's Actions on February 22, 2006; First General Counsel's Report at 4-8.

3 In Advisory Opinion 2007-10 (Reyes), the Commission concluded that a committee
4 holding a fundraising golf tournament could not give recognition to its contributors by posting
5 signs at particular holes with the contributors' names and job titles as well as the name,
6 trademark, or service mark of their employers. *See* AO 2007-10 (Reyes) at 3. The AO requestor
7 stated that its inclusion of the names, trademarks, and service marks of its contributors' corporate
8 employers was intended to encourage contributions. *Id.* at 2. The Commission concluded that
9 corporate names, trademarks, and service marks "are corporate resources" and, because neither a
10 corporation nor its agents may use the corporation's resources to facilitate the making of
11 contributions to a federal political committee, the proposed activity would violate the Act. *Id.* at
12 2-3. In AO 2007-10 (Reyes), the Commission distinguished AO 1984-43 (Brunswick) and AO
13 1978-77 (Aspin), in which the Commission concluded that a candidate's endorsers may be
14 identified with their corporate positions in campaign-funded advertisements, noting that neither
15 involved the use of corporate resources to facilitate contributions and that both predated the
16 Commission's corporate facilitation regulations. *Id.* at 3; *see also Corporate and Labor*
17 *Organization Activity; Express Advocacy and Coordination with Candidates Explanation and*
18 *Justification*, 60 Fed. Reg. 64260, 64274-75 (Dec. 14, 1995).⁶

⁶ The Commission has previously considered a specific regulation applicable to the use of corporate logos when promulgating regulations in response to the Supreme Court's decision in *Federal Election Commission v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238 (1986). The Commission considered alternative drafts and ultimately was unable to reach a majority decision. *See Corporate and Labor Organization Activity; Express Advocacy and Coordination with Candidates Explanation and Justification*, 60 Fed. Reg. 64260, 64268 (December 14, 1995). Nevertheless, as discussed above, and as observed by the Commission in MUR 5578 and AO 2007-10 after the 1995 rulemaking, the use of a corporate name or logo is something of value within the meaning of 2 U.S.C. § 441b(a).

1 In contrast to the circumstances in *Wetterling*, the Committees did not pay for the
2 expenses associated with the Concert's promotional materials, some of the Concert's
3 promotional materials suggest a corporate endorsement, and the names and logos used in the
4 Concert's promotional materials were those of the Businesses. Although the corporate names
5 and logos in the Concert's solicitations were things of value, the value of the names and logos of
6 these particular businesses is likely insubstantial, and the fundraising event was relatively modest
7 in size. The Concert raised \$13,500 and was attended by less than 200 people.

8 OFA stated in its response that it never hosted a "Concert for Change," had no knowledge
9 of the Concert prior to receiving the complaint, and that the Concert was not an official or
10 authorized OFA event, despite it being publicized on the OFA website. OFA Response at 2-3.
11 "Because the event was conducted entirely without the Committee's express or implied
12 authorization, the organizers of the event were not acting as [OFA's] agents" and, therefore,
13 OFA did not knowingly accept a corporate contribution and cannot otherwise be held liable for
14 the actions of individual volunteers[.]" *Id.* at 3.

15 OFA encouraged its supporters to engage in fundraising and provided the necessary tools
16 to do so, apparently without warnings to make sure fundraising efforts complied with the Act,
17 including that corporate resources could not be used to pay fundraising costs. As noted above,
18 the available information indicates that none of the Businesses contributed money directly to the
19 Committees or paid for the costs of the Concert. The only contributions made by the Businesses
20 appear to have been in-kind contributions resulting from the use of the company names and
21 logos to solicit contributions to the Committees. Nevertheless, given the modest size of the
22 fundraising event, which raised only \$13,500 and was attended by less than 200 people, and the
23 fact that the value of the company names and logos is not likely substantial in this case, further

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1 action by the Commission is not warranted to investigate whether the Committees knowingly
2 accepted or received in-kind contributions that they failed to disclose and that violated the Act's
3 contribution limitations or source prohibitions. *See Heckler v. Chaney*, 470 U.S. 821, 831
4 (1985).

5 Accordingly, the Commission dismisses the allegation that Obama for America and
6 Martin Nesbitt, in his official capacity as treasurer, violated the Act based on the alleged receipt
7 of contributions from Square Root Sales, Senate Realty Corporation, and M&A Development,
8 LLC.

9 **B. Alleged Failure to Include Joint Fundraising Notices**

10
11 The complaint alleges that the Concert's promotional materials solicit contributions to
12 OVF, which is a joint fundraising committee, and that the solicitations fail to include the proper
13 joint fundraising notice.⁷ Complaint at 4. As discussed above, some of the Concert's
14 promotional materials appear to solicit contributions to OVF, while others solicit contributions to
15 OFA.⁸ OFA's response averred that it cannot be held liable for the failure to include joint
16 fundraising notices on the Concert's promotional materials because the Concert was not an
17 authorized event. OFA Response at 2-3.

⁷ As cited to in the complaint, 11 C.F.R. § 102.17(c)(2), states that for joint fundraising activity conducted under this section, "[i]n addition to any notice required under 11 C.F.R § 110.11, a joint fundraising notice shall be included with every solicitation for contributions." Under the regulations, such joint fundraising notices must include the names of all committees participating in the joint fundraising activity, the allocation formula to be used to distribute joint fundraising proceeds, a statement informing contributors that they may designate contributions for a particular participant in the joint fundraising activity notwithstanding the allocation formula, and notice that the formula may change to avoid the making and receipt of excessive contributions. *See* 11 C.F.R § 102.17(c)(2)(i)(A)-(D).

⁸ For example, the Concert's sign states that the Concert is a fundraiser for "The Obama campaign," i.e., OFA, and included the OFA logo and website address. The Concert also has a webpage that solicits contributions on the OFA website, repeats the statements on the sign, states separately that the Concert was a fundraiser for the Obama Campaign, and includes a link to the OFA online contribution webpage. Further, the link to the OFA contribution page incorporates the OFA logo under the heading "Contribute Now." However, text on the Concert's OFA website also states "100%" of the contributions "go directly to the Obama Victory Fund."

1 It does not appear that the Concert's organizers were authorized by OFA to raise funds
2 for OVF. Relevant to this matter, OVF is a registered joint fundraising committee of OFA and
3 the DNC Services Corp./Democratic National Committee. See OVF Statement of Organization
4 (FEC Form 1), dated June 5, 2008. The Concert's organizers were not OVF participants, nor
5 were they a party to the agreement to fundraise jointly. OFA specifically denied that the Concert
6 was an authorized event, and denied any knowledge of its existence. See OFA Response at 3.
7 Although OFA encouraged its supporters to engage in fundraising for OFA and gave them the
8 resources to do so, including the MyBO fundraising tools and space on the OFA website, there is
9 no information to suggest that OFA authorized the Concert's organizers to engage in fundraising
10 for OVF, or provided any tools to do so.

11 Moreover, there is no information to suggest that OFA was aware of the Concert
12 organizers' attempt to solicit funds for OVF or that OVF ever received funds from the concert
13 organizers' efforts. The Concert's online contributions were made through contribution pages on
14 the OFA and DNC websites. There is no indication that the Concert's organizers had any control
15 over the recipient(s) of online contributions made on the OFA website, even if they had intended
16 the funds to go to OVF. Although the Concert's organizers created the Concert's sign and wrote
17 some of the text which appeared on part of the Concert's OFA webpage, such as the name, date,
18 and location of the event, it nonetheless appears that the content of the OFA website related to
19 the making of online contributions was not under the control of the Concert's organizers.⁹ The

⁹ For example, the contribution link on OFA's website included the OFA logo under the word "Contribute" and the OFA contribution link transferred users to a contribution page that does not appear to have been under the control of the Concert's organizer(s). It also does not appear that persons using the MyBO tools of the OFA website had any control over where online contributions made on the OFA site were ultimately directed.

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1 Commission does not have any information to suggest that contributions made through the OFA
2 website, unless explicitly stated otherwise, went to any committee other than OFA.¹⁰

3 Thus, the available information does not give rise to a reasonable inference that OFA
4 may have authorized the Concert's organizers to engage in fundraising for OVF. Therefore, the
5 Commission finds no reason to believe that Obama for America, and Martin Nesbitt, in his
6 official capacity as treasurer, violated 11 C.F.R. § 102.17(c) by failing to include a joint
7 fundraising notice in the Concert's solicitations.

8 **V. CONCLUSION**

9 The Commission dismisses the allegation that Obama for America and Martin Nesbitt, in
10 his official capacity as treasurer, violated the Act based on the alleged receipt of contributions
11 from Square Root Sales, Senate Realty Corporation, and M&A Development, LLC, as a matter
12 of prosecutorial discretion. *See Heckler v. Chaney*, 470 U.S. 821, 831 (1985). Additionally, the
13 Commission finds no reason to believe that Obama for America, and Martin Nesbitt, in his
14 official capacity as treasurer, violated 11 C.F.R. § 102.17(c) by failing to include a joint
15 fundraising notice in the Concert's solicitations.

¹⁰ It appears that in some specific instances, contributions to OVF were made through the OFA website. For example, an official OVF solicitation for an official joint fundraising event featuring Sarah Jessica Parker directs potential donors to make contributions to OVF online at <http://donate.barackobama.com/page/contribute/DCSJP>, which is an OFA web address. Under those circumstances, a joint fundraising notice would have been required. *See* 11 C.F.R. § 102.17(c).

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